EDITOR'S NOTE

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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM. 1986

PATRICIA M. BOURKE

v.

Jeanne Schuman

Petitioner

Respondent

PETITION FOR WRIT OF CERTIORARI TO ISSUE TO CALIFORNIA STATE SUPREME COURT

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ATTORNEY IN PRO PER
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160 PW

QUESTIONS PRESENTED

1). Was Petitioner deprived of Constitutional Due Process if she voluntarily submitted the issues presented in a complaint and cross-complaint to binding arbitration, and the Arbitrator, after the hearing, then referred to, considered, and gave a judgment against Petitioner expressly predicated, in part, upon seven wholly unpleaded causes of action of which the Petitioner had no notice were in issue against her, and against which she had had utterly no opportunity to defend?

2). May state law on one hand, denominate certain communications as absolutely or conditionally privileged, and then permit an arbitrator hearing a binding arbitration to assess large punitive and compensatory damages for communicatons which fit squarely within the privileged categories?

3). May a state refuse to vacate an arbitration award which is predicated upon an absurd and illogical conclusion of the Arbitrator which while diametrically opposed to elementary legal principles acted so as to turn truth into lies and thereby reverse the liability between the parties?

4). Is a litigant in a civil case entitled to any First Amendment protections against a large punitive or compensatory damage award for defamation if the communications were made to only a limited number of persons involved in the controversy, concerned private business affairs, and were truthful?

5). Does the United States Constitution require that a state recognize truth as a defense for private persons engaged in private communications, where no breach of the peace or other harm to the public is or could be involved in the publication?

PARTIES

The Petitioner in this matter is Patricia M. Bourke, attorney in pro per, who sued her former employee/associate for conversion, and intentional interference with advantageous relations, which suits stemmed from a referral of two clients made to her by said employee/associate. The employee/associate, is the real party in interest, who in turn, filed a Cross-Complaint against Petitioner for defamation and intentional infliction of emotional distress. The California Supreme Court is also named inasmuch as it was the highest state court which refused Petitioner a hearing.

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No.

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

PATRICIA M. BOURKE,

Petitioner,

vs-

JEANNE SCHUMAN,

Real Party in Interest

>>

PETITION FOR WRIT OF CERTIORARI TO ISSUE TO CALIFORNIA SUPREME COURT

>>

Petitioner, Patricia M. Bourke, respectfully prays that a Writ of Certiorari issue to review the denial by the California Supreme Court of a hearing in the above-entitled matter.

OPINIONS BELOW

The Arbitration Award/Decision which was rendered in this matter is set forth at pages A2-24 of the Appendix. The orders summarily denying Petitioner's Motions to Vacate in the Municipal Court,' her appeal to the Appellate Division of the Alameda County Superior Court, her Petition for Writ of Certiorari to the District Court of Appeal, and her Petition for Hearing to the California Supreme Court are set forth in pages 25-32 of the Appendix.

Apart from its summary denial of Petitioner's appeal, the Appellate Division of the Alameda County Superior Court sua sponte cited Petitioner for having filed a "frivolous appeal" , which order is found at A 29 of the Appendix.

JURISDICTION

The order denying Petitioner's Petition for Hearing filed in the California Supreme Court was dated December 17, 1987 and is appended at page A 32 . Jurisdiction of this court is invoked under 28 U.S.C. Sec. 1257 (3) to wit:

> "By Writ of Certiorari...where any title, right, privilege, or immunity is specially set up or claimed under the Constitution."

THE FEDERAL QUESTION WAS RAISED AT THE FIRST OPPORTUNITY

When Petitioner's Motion to Vacate Arbitration Award was first brought in the Municipal Court before Hon. Roderic Duncan, on November 7, 1985, it was pointed out to him in oral argument that the decision abrogated constitutional due process. (A 104-105)

STATEMENT OF THE CASE

The within parties stipulated to submit both the Complaint of Petitioner/employer and the Cross-Complaint of Respondent/employee to binding judicial arbitration. The resulting award was made in the form of a ten page decision (p. A2-24) which showed on its face to be expressly predicated upon an absurd and utterly irrational legal conclusion, which conclusion was pivotal in the case and acted to turn Petitioner's wholly truthful statements into lies, which "lies" then became the express basis for a large award of both compensatory and punitive damages for defamation against Petitioner, and in favor of the associate who had, in fact, repeatedly breached her fiduciary duties to Petitioner. In effect, the irrational conclusion of the Arbitrator actually reversed what would have otherwise been the liability between the parties.

The irrational legal conclusion of the Arbitrator was simply that, in his view, if an attorney employs an associate attorney (Respondent's employee status being conceded in the Arbitrator's Decision (p. A3-7) to perform services for a client referred to the employer/firm, then only the employee/associate can claim the attorney/client relationship, and the employer then has no right to claim either the fees and/or the files! Moreover, according to the arbitrator's reasoning, this supposedly remains the case even though the associate/respondent claimed and was awarded a "referral fee" from her employer for having referred the cases/clients to her! After all, according to this Arbitrator's reasoning, how could Petitioner claim any "relationship" with a client she never met and for whom she never actually performed any legal services??! (p. A 4-5,15-19)

The settled law of California relative to attorneys/associates, and the well-established, even elementary, agency law is diametrically opposed to this utterly absurd conclusion. Indeed, it is the employer who has all these rights, and any interference with those rights is considered a serious breach of fiduciary duty on the part of the employee.*1

Moreover, even had the communications contained lies, Petitioner rightfully claimed at the Arbitration (and at every level of the California court system) that the communications in question were all privileged*2 inasmuch as each and every

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1* Pollack v. Lytle (1981) 102 CA 3d 931, 175 Cal Rptr 81; Trimble v. Steinfeldt (1986) 178 CA 3d 646; Twomey v. Mitchum, Jones & Templeton, Inc. (1968) 262 CA 2d 690, 69 Cal Rptr. 222

*2 King v. Borges (1972) 28 CA 3d 27, 104 Cal Rptr 414; Lebbos v. State Bar (1985) 165 CA 3d 656 (report to state bar); Lerette v. Dean Witter Organization (1976) 60 CA 3d 573, 131 Cal. Rptr. 592; Block v. Sacramento Clinical Labs, Inc. 131 CA 3d 386, 182 Cal Rptr 438. Bradley v. Hartford Accident & Indemnity 30 CA 3d 818, 106 Cal Rtpr 718. Dealile v. General Tele. Co. (1974) 40 CA 3d 841, 115 Cal Rptr 582.

offending letter was written to prepare for litigation, and/or to prevent theft of fees which belonged to her, and each was sent only to persons or public agencies which were directly concerned.

Even though the Arbitrator made no factual findings whatever which would have brought Petitioner's communications outside the scope of the privileges under the California cases on point (e.g. ulterior motive, divergence from privileged subject matter, or excessive publication), the Arbitrator just made up his own version of defamation law, and proclaimed the Petitioner's language as to "agressive", and therefore according to his version of the law (no substantiating cases being cited) supposedly none of the privileges were applicable. (p. A 14, 21)

Then, in keeping with his foregoing irrational and illogical conclusions the Arbitrator decided that Petitioner had no legitimate grievance whatsoever against

her associate, and accordingly proceeded to assess her punitive damages for privileged communications! (p. A 21-23)

Moreover, a whole series of the letters claimed by the Arbitrator on the face of his decision as forming the basis for the award were unpleaded, unlitigated, and not known by Petitioner to even be in issue until she received the decision/award of the Arbitrator. There were a total of **15 letters** alluded to by the Arbitrator as being the reason for his decision,(p.A9,11-12,22) yet only **8 letters** had been pleaded by the associate as forming the basis for her Cross-Complaint.(p. A33-82)

Hence, the Arbitrator, apart from having turned truth into lies, had invented, considered, and passed upon SEVEN UNPLEADED CAUSES OF ACTION of which Petitioner had no prior notice whatever, and utterly no opportunity to defend. (See Section on Due Process)

The following evidence was placed before

the Arbitrator to corroborate the truthfulness of every one of Petitioner's statements in every letter (which evidence was also placed before every level of the California Court system). Firstly, Petitioner's Declaration in support of Motion to vacate was uncontradicted in that no contrary Declaration was filed by Respondent.[3*] (p.A83-104) Appended to it was the underlying "Contract for Legal Services" which had been prepared by Respondent, who had inserted Petitioner's name as the sole "attorney" (p, A 85). Secondly, appended were a series of pay vouchers and cancelled checks (p.A86) which demonstrated that Respondent had charged Petitioner and was, in fact, paid for all services

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3* California procedure requires that the evidence and oral proceedings had in an Arbitration be set forth in a Declaration accompanying a Motion to Vacate. Hirsch v. Ensign (1981) 122 CA 3d 521, 176 Cal Rptr 17. In order that the appendix not be overly lengthy, only the most pertinent excerpts of the Petitioner's verified Declaration are appended.

rendered for these clients. Thirdly, Respondent had then signed the Petition for Fees and sent it to Social Security denominating herself as acting in an "associate" capacity.(p. A86-87)

Respondent was thereafter discharged by Petitioner and relieved of further duties relative to these cases/clients. (p. A 7-8) Respondent thereafter, and without the knowledge or consent of Petitioner, contacted both clients, misrepresented her employee status, and procured each to sign a statement (p 87-88) which indicated that she and NOT Petitioner was entitled to the fees and to the case files. Respondent then used these statements to procure Social Security to remit the fees to her.(p. 88)

In so doing, Respondent committed serious breaches of both her ethical and fiduciary duties as an attorney and an employee.

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see footnote 1 pg. 6

Incredibly, and in spite of the fact that the underlying contract specifically named only Petitioner as "attorney", in spite of the fact Petitioner demonstrated by uncontradicted evidence that she had paid the associate for all services performed for the clients, had even advanced costs for the client (p A10,96) , in spite of the admission by Respondent that she had been acting as an "associate" on the Petition for fees, and in spite of the fact the Arbitrator found that Petitioner had to pay her associate a "referral fee" for these same cases/clients, the Arbitrator nevertheless made the following incredible and utterly insane conclusions right on the face of his award: that Petitioner had "no connection" to the cases, "no contractual relationship" with the clients", and no right to claim an "attorney/client relationship" with them. (p. A 15-17)

Although, all the foregoing law and

uncontradicted evidence and highly pertinent documentation was put before every level of the California court system, each, in turn, nevertheless refused to vacate the award against Petitioner!

PETITIONER HAS BEEN DEPRIVED OF THE UNITED STATES CONSTITUTIONAL GUARANTEES OF NOTICE AND HEARING

No adequate, independent state grounds exist which could remotely justify allowing an Arbitrator to invent, review, and then decide seven wholly unpleaded causes of action. This is particularly the case when the tort of defamation is involved. Under well-settled California law technical rules of pleading strictly apply. See Haub v. Friermuth (1905) 1 CA 556, 82 P. 571; Haddad v. McDowell (1931) 213 C 690, 3 P. 2d 550. The admission into evidence of any unpleaded communications, even though used only to identify the

publisher, is automatically grounds for reversal. Bird v. Huber (1918) 179 C. 245.

These same very strict rules of pleading of defamation apply in federal practice as well.

> "In an action for slander or libel the words alleged to be defamatory must be pleaded and proved. It is also essential that it be alleged that the accusation was untrue". Holliday v. Great Atlantic and Pacific Tea Co. (1956) 256 F. 2d 297, 302.

In fact, an action which does not set forth the actual words claimed to be defamatory is appropriately stricken upon a proper motion being made. Brook Water Co. v. Jaffe (1968) 284 F. Supp. 702: Simpson v. Oil Transfer Corp. (1948) 75 F. Supp. 819. Because defamation is not a favored cause of action, it must therefore always be specifically alleged. Cimijotti v. Paulsen (1963) 219 F. Supp. 621.

There is indeed virtually no difference between proclaimations made by California courts about a litigant's supposed rights to due process, and holdings of the federal

courts and United States Supreme Court relative to the constitutionally mandated requirements of notice and hearing.

Under the case law of California a judgment which is outside the scope of the notice given is in excess of jurisdiction, contrary to due process of law, hence void. Costa v. Superior Court 137 C 79, 69 P. 840; Moore v. California Minerals Products Corp (1953) 115 CA 2d 834, 252 P. 2d 1005; Snyder v. Superior Court 206 C 346, 274 P. 337; Wallace v. Otis (1941) 47 CA 2d 814, 119 P. 2d 195.

The standards proclaimed by the United States Supreme Court in past cases as being guaranteed by our Constitution are virtually identical.

> "The United States Supreme Court traditionally has held that the Due Process Clause protects civil litigants who seek recourse in the courts, either as Defendants hoping to protect their property, or as plaintiffs attempting to redress grievances." Logan v. Zimmerman (1981) 455 U. S. 422, 429

> "Many controversies have raged about the cryptic and abstract words of the

> Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the case." Mullane v. Central Hanover Bank and Trust Co. (1950) 339 U. S. 306, 313.

In the instant case, Petitioner had no notice whatsoever of any of these unpleaded letters being at issue, no motion to amend was made, and moreover, no motion to admit the letters into evidence in Respondent's case was ever made.(p A 90-95)

Had anything like that occurred, Petitioner could, at least, have had the opportunity to point out that the Statute of Limitations had run on all the unpleaded letters (C.C.P. 340(3).

Moreover, Petitioner submitted ONLY her Complaint and the Cross-Complaint of her associate to binding Arbitration...and nothing else. She had no knowledge or notice whatsoever that any further accusations could be involved. Consequently there neither was nor could have been any

hearing or opportunity for a hearing on claims yet to be invented by the Arbitrator after he took the case under submission. (p. A 90-95) At the point of submission the Arbitrator then took it upon himself to accuse, try, and find Petitioner liable, and vindictively included these additional letters in the list of "misdeeds" for which he resolved Petitioner must pay. (p. A 9,11,12,22)

Under well-settled law of California, judicial power must be exercised in conformance with due process of law. U. S. Const. Amend XIV, Sec. 1; Cal. Const. Art I, Sec. 13. Whenever it can be affirmatively established that the trial court has denied a party due process, resulting in a miscarriage of justice, the judgment must be reversed. Carstens v. Pillsbury (1916) 172 C 572, 158 P. 218 (right to reasonable opportunity to meet evidence); Estate of Buchman (1954) 123 CA 2d 546, 267 P. 2d 73 (right to notice and

hearing); National Auto Ins. v. Fraties (1941) 46 CA 2d 431, 115 P. 2d 997 (right to hearing on issues raised).

Nevertheless, in spite of the clear violations of these supposedly absolute "guarantees" and "rights" every level of the California court system summarily refused to hear or to set aside the large judgment against Petitioner!

PETITIONER HAS BEEN ARBITRARILY DEPRIVED OF PRIVILEGES GRANTED BY THE STATE AND HENCE HAS HAD HER PROPERTY TAKEN WITHOUT DUE PROCESS

Apart from the obvious violations of Due Process stemming from the award based, in part, upon unpleaded causes of action, would there not likewise be a blatant violation of due process by holding a defamation defendant liable for punitive damages for communications which fell squarely within *2 absolute privilege recognized by well-settled California law??

The Supreme Court has previously held that although the thing at issue is a

privilege granted by the state rather than a traditional property right, it too is protected under the Fourteenth Amendment Due Process Clause from arbitrary state acts to deprive one of such privileges Graham v. Richardson 403 U.S. 365; Shapiro v. Thompson 394 U.S. 618.

Finally, viewed as a whole, if a case between private parties is arbitrarily and capriciously decided in violation of federal principles of law and contrary to undisputed fact, it may contravene the Fourteenth Amendment for these reasons. Williams v. Tooke (1940) 108 F. 2d 759.

DID THE FACT THAT PETITIONER SUBMITTED TO BINDING JUDICIAL ARBITRATION MAKE THE AWARD AGAINST HER PROPERLY INVIOLATE UNDER STATE LAW?

Did there exist adequate, independent state grounds for the sustaining of this judgment because the Petitioner had submitted the Complaint and Cross-Complaint to "binding" arbitration, and hence ipso

facto the decision was inviolate and could not properly be set aside? If the law of California provided that "binding is binding" and applied that standard regardless of the magnitude of the error(s) of the Arbitrator or even if those errors caused violations of the litigant's Constitutional rights, any such law would itself be violative of the United States Constitution. An arbitrator hearing a judicial arbitration is necessarily clothed with judicial authority and hence functions as an arm of the State.

However, that is clearly not the law of California. Rather, Judicial Arbitrations are vacatable pursuant to the terms of C.C.P. 1143.23, which, in turn, refers to C.C.P. 1286.2. The annotations under this latter code section (which governs contractual arbitrations) (there being no cases in point under C.C.P. 1143.23), show quite clearly that binding arbitrations are

hardly inviolate. In these cases, the applicable criterion for vacating a binding arbitration award is simply "gross error of law".*4 The cases then demonstrate what is meant by "gross error of law". It is an error no more serious than e.g. a miscalculation of damages. Not one case which held a binding arbitration had to be vacated involved an error which went to liability. In the instant case, the Arbitrator made a whole series of errors, each of which actually reversed the liability between the parties, yet one California court after the other has refused to vacate it!

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*4 Kirby Campbell v. Farmer's Insurance Exchange (1968) 260 CA 2d 105, 67 Cal. Rptr 175; Leon Handbag Co. v. Local 213 (1969) 276 CA 2d 240, 81 Cal Rptr 63; Bierleim v. Johnson (1946) 73 CA 2d 728, 66 P. 2d 644; William B. Logan & Associates v. Monogram Precision, Inc. (1960) 184 CA 2d 12, 7 Cal Rptr 212; Meat Cutters Local No. 439 v. Olson Brothers (1960) 186 CA 2d 200; Muldrow v. Norris (1852) 2 C. 74.

DO PRIVATE PARTIES HAVE ANY CONSTITUTIONAL PROTECTION FOR TRUTHFUL COMMUNICATIONS RELATIVE TO PRIVATE MATTERS?

In the instant case every document placed into evidence at the Arbitration and appended to Petitioners unrefuted Declaration (p A 83-104) demonstrated that the statements in all of Petitioners letters were substantially true. The Arbitrator explained the reasons he believed Petitioner was lying right on the face of his decision. Which remarks, in turn, indicated that the Arbitrator was wholly ignorant of the legal effect of the the "Contract for Legal Services" (p.A5-6,85) or of the associate/Respondent having first made a "referral" of the clients and cases, and then having been paid by Petitioner for all the services she performed for these same clients. The Arbitrator just treated elementary agency law as if it did not exist.

Moreover, he may simply have been mistaken as to whom was named as "attorney"

on the "Contract for Legal Services" (see footnote in Arbitrator's Decision p. A 5). In fact, by Respondent's own admission, she was still acting in an associate capacity on conclusion of the services when she filled out the Petition for Fees. (p A 86-87)

Thereafter, and contrary to Petitioner's rights, she then indeed attempted to convert the fees when she had the clients sign statements on her own letterhead which misstated who was the attorney and who was entitled to the fee and files, (p. A87-88) which writings she then used to procure Social Security to send her the entire fee from both cases. (pA 89-90) While Respondent may have later tendered part of the fees to Petitioner, this would hardly negate or excuse her prior conduct. (p. 90)

Consequently, what is presented here is a perhaps a unique Constitutional issue relative to First Amendment Free Speech guarantees which are applicable to

state action via the Fourteenth Amendment. What we have here are substantially truthful statements of a private individual regarding private matters uttered in a context which would commonly be considered privileged under the laws of most states, yet, the California courts have incredibly sustained an award of punitive damages in against Petitioner for these same communications.

The typical defamation case, and all the landmark cases in the area (e.g. New York Times, Gertz, Rosenbloom) concern publications by the media, and hence freedom of the press would seem to be the basic issue. The Supreme Court has stated that speech on matters of purely private concern is of less First Amendment concern, and the role of the United States Constitution is far more limited when matters of private concern are involved. Dun and Bradstreet v. Greenmoss Builders (1984) 105 S. Ct. 2939, 86 L. Ed. 593.

Hence, in that case the United States Supreme Court declined to structure the burden of proof necessary for entitlement to punitive damages as a result of a false credit report.

By the same token, the United States Supreme Court in Beauharnais v. Illinois (1952) 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919, declined to impose any constitutional protections when a state sought to punish "fighting" words which were such as to cause an immediate breach of the peace. The court acknowledged that lewd, profane, obscene speech, and libelous communications have little social value when compared with a state's interest in preservation of order and morality. Hence, their prevention and punishment have never been thought to raise a constitutional issue.

This case involves none of those characteristics. Rather, the suit is between individuals and the state's

punishment was directed at a substantially truthful communication concerning a strictly private matter with no issue of "fighting" words, no public dissemination, and no public issue being involved.

Normally, a case such as this would never have had to reach the United States Supreme Court. California, like most states, ordinarily recognize truth to be a "complete defense". Washer v. Bank of America (1948) 87 CA 2d 501, 197 P. 2d 202; McLaughlin v. Standard Accident Insurance Co. (1936) 15 CA 2d 558, 59 P. 2d 631; Jeffers v. Screen Extras Guild (1958) 162 CA 2d 717, 328 P. 2d 1030. Moreover, Freedom of Speech has been found by California courts to be:

> "not limited to political expression or comment on public affairs, but must embrace all issues about which information is needed or appropriate to enable members of society to cope with the exingencies of this period." Olivia N. v. National Broadcasting Co. (1981) 126 CA 3d 413; 178 Cal Rptr 888.

The California courts simply failed to pay enough attention to this matter to apply its own well-established laws, and arbitrarily permitted the award against Petitioner to stand.

The question then arises as to whether, apart from the previously discussed violations of due process, yet one more violation is found because Petitioner has been assessed punitive damages for communications which were substantially true. Does the First Amendment accord private individuals a freedom to speak the truth as to matters which have no tendancy to breach the peace, but are of purely private concern? Is the act of a state in severely punishing one for truthful communications, a violation of federal constitutional rights?

Petitioner's research reveals no authority from the United States Supreme Court on the point. There neither is nor could be any recognizable state interest

in punishing truthful statements in whatever context they are uttered (absent the breach of the peace considerations). Even though a given statement may not concern public affairs, and accordingly could be deemed too trivial for any constitutional protection, this would be a wholly invalid conclusion. Are not such statements far more commonplace than the utterances which are usually before this court? To render average Americans fearful of arbitrary state action taken against them for speaking the truth to one another about everyday business and personal affairs would surely deprive them of a most basic liberty and freedom.

In writing these letters (p. 44-82) Petitioner relied upon what she believed to be a right to tell the truth. Also, by engaging in the correspondence in a context which California has denominated as subject to either absolute or conditional privileges, she felt secure that she had no

civil liability whatever. Yet, the California Court system permitted her case to be heard before an arbitrator who just made up his own law on one issue after the other.

Then, upon attempting to rectify these pitifully obvious mistakes through the appeal process, rather than the California Court system simply setting aside the absurd decision of the Arbitrator, not one level of the courts was willing to bother with it, and Petitioner was assessed a fine of $2,500.00 for having bothered them!!

Do we Americans have a system which countenances the rule of man who can use the power of the state to take property on any arbitrary basis he chooses, or do we have the rule of law? This is indeed an example of American tyranny. Whether or not it will be ultimately corrected will remain to be seen.

THE ENTIRE CALIFORNIA COURT SYSTEM HAS PERMITTED THIS ARBITRATION AWARD TO STAND BECAUSE OF SIMPLE CONSIDERATIONS OF EXPEDIENCY

Normally, in examining a case brought from a state court system to the United States Supreme Court, a major consideration of the United States Supreme Court is whether a state court judgment rests upon adequate, independent state grounds. In making this determination, normally studious refinements and technical interpretations become involved, as the United States Supreme Court examines the subtleties of the decisions of the state courts. There is no need to examine any such refinements here. Not only was there no written opinion explaining why Petitioner's appeals/writs were denied, but rather obviously, the within matter involved the abrogation of one law of California after the other without justification or excuse. These errors, in turn, have violated Petitioner's Constitutional rights.

A young, obviously unqualified arbitrator was empowered to decide a binding arbitration, made one gross, fundamental error after the other to the point where he actually reversed the liabiity between the parties and perpetrated an utter travesty of justice upon Petitioner. Yet, although Petitioner timely brought this obvious outrage before every level of the California court system each and every one of them, in turn, summarily rebuffed Petitioners pleas.

Interestingly, each court involved here has recently gone on record as having a priority consideration: the catching up with its respective backlog of cases. (p A106-109) Indeed, a civil matter originating in Municipal Court was just not worthy of their attention. Indeed, the matter may have been more apt to gain their attention had Petitioner been a criminal, or had she been a black person or homosexual complaining of some minor

alleged infringement. Petitioner's obvious rights have been simply sacrificed to expediency.

Apparently there exists a marked discrepancy between the actual role of the appeals courts (whether state or federal), and what the public or misinformed attorney perceives that role to be. Civics classes, law schools, and legal authorities all assure us that we have "constitutional guarantees", "individual rights", and accordingly that the courts must (and supposedly do) enforce these "basic legal requirements". After all, by definition, legal "rights" must be recognized, "guarantees" must be honored, and "legal requirements" must be met. To the extent that courts exercise "discretion" to refuse to hear such violations of constitutional rights, we have no "rights".

Rather, contrary to what the American public believes, we have only theories and ideals which seem to apply, in actual

practice, only in those cases which the courts agree to hear. Apparently, this remains the situation, even if the hapless litigant has had to go through the expense anguish, and the ordeal of bringing a matter all the way through the state court and even into the United States Supreme Court! *5

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*5 In the matter of Bourke v. East Bay Regional Parks et al (U.S. Supreme Court No. 85-1081), the Alameda County Superior Court had issued an order for the outright dismissal of Petitioner's entire taxpayer suit on which she had been granted a summary judgment in her favor only days before. The dismissal was predicated upon an interpretation of a procedural statute diametrically opposed to dicta in an prior California Supreme Court case, contrary to a later District Court of Appeal case on the precise point, and contrary to authoritive legal texts on the subject. Nevertheless, the decision of Hon. Harry Low of the Fifth Division of the First Appellate District affirmed the lower court and issued an published opinion which would have had retroactive effect, and which could have caused the outright dismissal of an untold number of other meritorious cases. When this single issue case was then brought before the California Supreme Court, it denied Petitioner a hearing, but "decertified" Hon. Harry Low's opinion with the result that his dismissal of Petitioner's entire case was binding, but that his novel procedural ruling would be applicable only to Petitioner's case. Petitioner thereupon alleged a violation of

Hopefully, the United States Supreme Court does not believe that what occurred in these two matters (see footnote 5) represented only isolated, bizarre abberations, and hence unworthy of its attention. Indeed, this Petitioner's experiences with the local California Court System have involved one "horror story" after the other during her 15 years of civil practice. Typically, these repeated failures of the local courts to either know or to protect litigants rights have involved clients who simply could not afford even the first phase of the appellate process. Predictability, even in the most obvious matters seemed non-existent and merit and hard work

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*5 cont. equal protection and due process. Even though this series of events occurred in a context which suggested the likelihood of political motivation (the underlying suit being to set aside a popular, but unconstitutional transfer of public lands). The United States Supreme Court responded with a form letter denying a writ of certiorari.

meaningless. The only difference between these two cases and the many others is that in these cases they did it to a lawyer.

For example, the Appellate Division of the Alameda County Superior Court did not just "deny" Petitioner's appeal in this case, but they, in addition, sua sponte cited her for having filed a "frivolous appeal"[*6]...a result which under these facts and circumstances is utterly incredible. California defines a "frivolous appeal" as one "totally and completely devoid of merit" Otworth v. Southern Pacific Transportation Co. (1985) 166 CA 3d 452, 212 Cal. Rptr. 743.

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*6 Just within the past few days Petitioner has received the written decision of the Appellate Division of the Alameda County Superior Court assessing her $2,500.00 in sanctions. The decision accompanying the award of sanctions misstated both facts and law. For example, the court incredibly found: "Bourke has pointed to nothing in the record upon which she basis any claim of truth of the utterances". It then repeats the vituperative language of the Arbitrator without ever even addressing the

This citation for "frivolous appeal" ought to demonstrate rather conclusively that Petitioner's appeal was summarily denied by a panel which did not even grasp the basic issues or even bother to review the documents submitted to them. Indeed, the Arbitrator's Decision standing alone, if carefully read, ought to have alerted even a moderately sophisticated layperson that something was very wrong.

This Petitioner is informed and believes that over 98% of the civil appeals

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*6 Arbitrator's pivotal disregard of basic agency law. It likewise just repeats the Arbitrator's view of defamation law, apparently concluding that nasty words are necessarily malicious and not privileged! The decision utterly ignores Petitioner's unrefuted, sworn Declaration as well as all the documents appended to it. (p. A 83-104) including the "Contract for Legal Services", which document ought to have been determinative in the case!? It utterly ignores the privilege attached to communications with public agencies. Moreover, it utterly disregards the fact that the award on its face was predicated upon unpleaded causes of action of which the Petitioner had no notice. This decision awarding $2,500 in sanctions against Petitioner was written by Hon. Benjamin Travis and concurred in by Hon. Mark Eaton.

submitted to that panel result in the trial court being affirmed. Indeed, this Petitioner is hardly their only victim.

It is highly significant that when Petitioner brought the matter before the the District Court of appeal, the judge assigned was Hon. Harry Low, the same judge who wrote the decertified opinion in the East Bay Parks[*5] matter. Even though the within matter rather clearly came within the criteria established for hearing such writs,[*7] the Petitioner is informed and believes that he denied it one day after the papers were submitted to him, and without even bothering to wait for any reply from the Respondent. Indeed, to have bothered with a civil matter originating in Municipal Court could have prejudiced his recent distinction of presiding over the only division caught up with its work. (p. A108)

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*7 C.C.P. 1068; Abelleira v. Dist. Ct. of Appeal (1941) 17 C 2d 280; Auto

At the point in time that this matter reached the California Supreme Court, it is commonly known that three of the justices were concluding their terms on the court and doubtlessly, great turmoil confronted the court. Moreover, under Court Rule 29 limits the California Supreme Court to the hearing of "important" questions of law or to secure "uniformity". Since this matter came from Municipal Court and no decisional law was involved which warranted its correction or "decertification", there was no need to hear it. Indeed, the irony of it is that the more obvious the error of the lower court, the less apt the California Supreme Court would hear it and correct it inasmuch as their function to educate the bench and bar could not then be served. Apparently, the protection of one

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*7 Equity Sales, Inc. v. Superior Court (1962) 57 C 450; Brady v. Superior Court (1962) 200 CA 2d 69, 19 Cal Rptr 242.

individual's rights, especially in a civil action, simply did not seem sufficiently important.

Hence, the entire system just failed to work and deprived Petitioner of her property and her constitutional rights without even a semblance of due process.

CONCLUSION

That an Arbitrator would have done such a thing to Petitioner in the first instance is a travesty. That Petitioner should then have had to go through the time, anguish, and expense to have to bring this obviously wrong judgment all the way to the United States Supreme Court to vindicate herself is a disgrace. For the United States Supreme Court to now permit that judgment to stand is an indictment of our entire legal system.

Patricia M. Bourke

APPENDIX

MUNICIPAL COURT FOR THE OAKLAND-PIEDMONT
JUDICIAL DISTRICT, COUNTY OF ALAMEDA
STATE OF CALIFORNIA

Bourke No. 389281

vs- MINUTES

Schuman

DEPARTMENT # 2 HON. Lewis P. May Judge

Cause called for trial. jury

Plaintiff(s) appearing: Bourke: attorney Linda Chester and pro per

Defendant(s) appearing:

Schuman: Attorney
W. Gibb & in pro per

Hornof: Attorney
G.R. Wright

Staska: Attorney
S.W. Blackfield

Motion of defense counsel for defendant Staska to abate action be and is GRANTED. for (illegible) of attorney.

Pursuant to Stipulation of all parties present the court orders matter submitted to binding arbitration.

Minutes of Nov. 5, 1984

George R. Dickey, Clerk-Administrator

M. Clark, Deputy Clerk

A1

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Plaintiff FILED JUNE 24, 1985

Patricia M. Bourke

Defendant

Jeanne Schuman, et. al.

AWARD OF ARBITRATOR

The undersigned arbitrator, having been duly assigned by Alameda County Superior Court, and having heard and considered the evidence of the parties in the above referenced cause on June 11, 1985, awards in full and final settlement of all claims submitted to arbitration under California Rules of Court, Rule 1615 as follows:

JUDGMENT IN FAVOR OF ( ) PLAINTIFF.
(XX)CROSS-CROSSCOMPLAINANT
AGAINST ( )DEFENDANT (XX)CROSS-DEFENDANT
in the sum of $ Fourteen Thousand Two Hundred Seventy One Dollars and eighty six cents.

(See attached Memorandum of Decision)

Dated June 21, 1985

John M. True, III
Arbitrator

AWARD OF ARBITRATOR ENTERED AS JUDGMENT IN COMPLIANCE WITH RULE 1615(c) CALIFORNIA RULES OF COURT ON (date) July 30, 1985 in Judgment Book No. page no.

George R. Dickey, Clerk By G. King
Administrator Deputy

MEMORANDUM OF DECISION

I

Plaintiff Patricia Bourke employed Defendant Jeanne Schuman as an associate attorney in her law offices pursuant to an oral contract of employment. At all material times each was a licensed member of the California Bar. Schuman worked for Bourke pursuant to at least three different employment arrangments. At first, she was

paid $1,000.00 per month for more or less full time work. Later her compensation was changed frommonthly salary to an hourly wage, again for essentially full-time work. Still later she began subletting an office from Bourke and was paid at a slightly higher hourly rate for any work she did on Bourke's cases. From the outset, even while employed "full-time" by Plaintiff, Schuman worked on some of her own cases including court-appointed criminal matters and referrals from other attorneys. Two such referrals, social security cases involving Defendants Staska and Hornof, prompted the events giving rise to this lawsuit.

The parties apparently agreed from the outset that certain cases could be "referred" by Defendant to Plaintiff's office even though Schuman was an employee of Bourke. Schuman now contends that it was agreed that <u>any</u> case so referred would entitle her to a referral fee of anywhere

from 25% to 33 1/3%, the exact amount or percentage to be decided on a case-by-case basis. Bourke contends, on the other hand, that only "profitable" cases would be subject to a referral fee, and that the amount and/or percentage of those fees would be decided case-by-case.

During 1980, while Schuman was employed by Bourke, two individuals, Staska and Hornof, were referred separately to Schuman by a friend. Staska and Hornof wished legal assistance in obtaining social security benefits that had been denied the. Schuman agreed to represent them and had each of them execute a retainer agreement using the form then in use in Bourke's office.-[1/]

1/ Only Staska's retainer agreement was produced at the hearing. Bourke's cause of action against Staska has been dismissed with prejudice. Hornof, who is still in the case, appeared with counsel and declined to produce any part of his file asserting attorney-client privilege. Based on all the evidence, however, it is concluded that Schuman's and Hornof's attorney-client relationship was memoralized on a form similar to that used by Staska and Schuman.

On each occasion Schuman informed Bourke that she was taking in those cases, and obtained her approval for doing so. She also claims that in each case she told Bourke that she would turn over any fee from the case to the Bourke office less a referral fee to be decided upon according to their agreement. Bourke, she says, agreed.

During 1980 and 1981 she processed both cases successfully and obtained fees in the amount of $1,251.45 from the Staska case and $628.00 from the Hornof case. These fees were paid in due course directly to Schuman by the U.S. Treasury pursuant to her petition for her statutory share of 25% of the total recovery to her clients.

The record is clear that in each instance she attempted to give Bourke these fees. Before addressing the transactions by which she made these attempts, however, the deterioration of the professional relationship between Bourke and Schuman must be described.

As of March 1, 1981, Schuman had ceased being an employee of Bourke's and had begun subletting an office from Bourke as described above. At this time although the Staska case had been finished, fees had not been awarded. It is not entirely clear if the Hornof case had been completed but no fees had been generated. Pursuant to an oral rental agreement Schuman paid Bourke $91.00 for a furnished office including the use of a receiptionist, a typewriter, copier and telephone (actual telephone and copier charges were to be reimbursed to Bourke). During March and the first part of April, 1981, she worked on her own cases and performed services for Bourke on certain cases pursuant to the employment arrangement described above. She submitted periodic vouchers for payment of these services. Although she paid rent in March, it is undisputed that she did not pay Bourke rent, in any amount, and on April 1, 1981, nor did she reimburse Bourke for telephone or copier charges.

On April 4, 1981 Bourke served Schuman with a 30-day notice to quit the office. Between that date and April 23, 1981 the two parties argued about various aspects of their situation. Bourke says that Schuman abused her privilege to use office equipment such as the typewriter and that she was not getting work done on cases as she had promised. Schuman says that Bourke interfered with her use of her leased office, with her attempts to get work done and with her clients.

On April 23, 1981, Bourke refused to pay Schuman's most recent voucher in the amount of $305.13 for services performed. She wrote a three page letter to Schuman accusing her of failing to get work done, of having a "bad, resentful, immature attitude", of uttering "dishonest threats" and of other wrongs. She also obtained both the Staska and Hornof files and wrote to both clients asserting that Schuman was no longer in her employ and had "no further authorization or authority to represent (either of them) in

any way." She instructed her secretary to secrete the files in her (Bourke's) desk when she had finished typing the letters referred to above.

The secretary apparently neglected to do this, however, and left the files on top of her desk. Schuman happened upon the files while both Bourke and her secretary were out and discovered the actions Bourke had taken. She retrieved the files and took them to her own office.

When Bourke returned and found the files missing she went into Schuman's office where a loud argument ensued. Bourke accused Schuman of "theft" and called her a "kike" and a "bitch". She also called the Oakland Police and the California Bar Association. The police responded but declined to intervene. That afternoon Schuman reached the conclusion that she would have to leave her office. She did do in the evening after Bourke had left, moving into another office in the same building.

The following day Schuman wrote Bourke returning keys to her office. She also accused Bourke of interfering with her quiet enjoyment of her subleased space and of harassing her.

Shortly thereafter, on June 1, 1981 Schuman paid Bourke the sum of $946.32 which represented the Staska fee of $1,251.45 less $305.13 which Schuman claimed Bourke owed her for the final voucher referred to above. Bourke negotiated this check, but when Schuman wrote her a second check on May 21, 1982 in the amount of $653.00 for the entire amount of the Hornof fee ($628.00 plus $25.00 medical bill) Bourke returned it and the instant litigation commenced.

Between the date Schuman moved out and the date this lawsuit was served, however, Bourke pursued her perceived grievance against Schuman with what can only be described as ferocious energy. She commenced proceedings against Schuman

before the Bar Association as noted above. She wrote repeated and lengthy letters to Staska and Hornof in which she described Schuman in decidedly unflattering terms. She threatened and ultimately commenced legal action against them when they declined to cooperate with her. She conducted an extremely lengthy and voluble correspondence with the Social Security Administration which was again marked by repeated and extremely negative descriptions of Schuman. She contacted Schuman's next employer, again negatively characterizing Schuman and even threatening to sue that firm. She also called another person who she apparently thought might be interested in employing Schuman and volunteered the information that "she could not in all good conscience give (Ms. Schuman) a good recommendation." She even wrote to congressional representatives including uncomplimentary characterizations of Schuman. The record herein contains at

least fifteen separate pieces of correspondence from Bourke to someone other than Schuman, each one containing at least one severely derogatory comment about Schuman. "Spiteful," "impudent," "arrogant," "childish," little embezzler," "thief," and "blackmailer" are but a few examples of Bourke's descriptive terminology. As another example, in an April 28, 1981 letter to Social Security Administration she made, among many, many other assertions, the statement that "That young woman attorney is absolutely uncollectible and owns barely the clothes on her back."

II

ISSUES

Bourke filed a complaint against Schuman, Staska, and Hornof. Against Schuman she complained of:

1). Wrongful interference with her (Bourke's) contractual relationship with Staska and Hornof;

2). Breach of Contract (apparently both the oral sublease and the oral agreement as to the Staska and Hornof fees);

3). Conversion of the Staska and Hornof fees and files.

Against Staska and Hornof she complained of "willfully and deliberately assisting" Schuman in converting money belonging to Plaintiff.

Schuman cross-complained against Bourke for:

1). Breach of the oral agreement to pay a referral fee on the Staska case;

2). Breach of the oral agreement to pay a referral fee on the Hornof case;

3). Breach of the oral contract of employment;

4). Defamation; and

5). Intentional infliction of emotional distress.

Each party has asked for damages based on the wrongs complained of and each has submitted some proof in respect to damages claimed.

III

DISCUSSION

None of Bourke's claims against Schuman based on the Hornof and Staska cases survives scrutiny. Moreover, her pursuit of Schuman and the fees bears all the indicia of a personal vendetta out of all proportion to the amounts in dispute. In the considered opinion of the undersigned, she has used this forum, as she has every other available to her, to vent her spleen against Schuman in a fashion which reflects dismally on her status as a legal practitioner. The award herein reflects, among other things, the profound sense of outrage felt by the undersigned at the intemperate, unwarranted, and relentlessly hostile attacks conducted by Bourke on literally every person connected with this unfortunate episode. The spectacle of elderly sociala security pensioners being dragged as<u>defendants</u> into a bitter wrangle over a few hundred dollars in attorney fees

is one of the most disheartening imaginable to anyone who believes that the law is to be used for mankind's betterment.

1. Bourke's Claims

It is found that Schuman did not, as Bourke contends, wrongfully interfere with any attorney-client relationship between Bourke and Staska or Hornof. None existed. Both clients so informed Bourke when she asked. Mr. Hornof testified repeatedly at this hearing that "Jeanne Schuman is my lawyer", and that he wanted nothing to do with Bourke. Indeed, Bourke never had anything to do with either his or Staska's case. She freely admitted that she knew nothing of the law governing their claims and that she never even met Staska. Under the circumstances it cannot be found that Bourke had any contractual relationship with Staska or Hornof to be interfered with.

It is similarly clear that Schuman did not breach her agreement to give Bourke the

fees owing on the Staska and Hornof cases. Nor did she convert the fees to her own use. She did attempt to claim that she was owed part of the fees as a referral bonus, but manifestly desisted in that endeavor prior to being sued. Staska's fees were paid and accepted by Bourke even with the deduction for Schuman's final payment for services to Bourke's cases.[2] The Hornof fees were tendered but rejected.[3]

2/Bourke claims that, because of poor quality of Schuman's work in the relevant period, she had no obligation to pay the voucher and Schuman's withholding of the voucher amount from the Staska check was wrongful. Bourke's proof in this regard was wholly unconvincing.

3/Schuman wrote an endorsement on her check to Bourke for the Hornof fees in an apparent attempt to bring the dispute to resolution. Bourke claimed that this "restrictive endorsement" entitled her to reject the tender. This claim is undermined by 1) the circumstance that Bourke had already prepared and was ready to serve this lawsuit (indeed she returned the check with the summons and complaint), and 2) her admission at the hearing that she could, and would have negotiated the particular check introduced in evidence, but that, somehow, Schuman had substituted

Bourke's claim that Schuman, aided by Staska and Hornof, converted the client files must fail as well. It is abundantly clear that the actual attorney-client relationship existed between Schuman on the one hand and Staska and Hornof on the other. Schuman met and worked with the client, made the appearances and did whatever else was necessary to secure their benefits. Bourke had no interest in the cases or relationship to the clients. As defendants correctly point out, the actual case files ultimately belong to the clients and it is they who have the right to determine their disposition. Schuman had an obligation to ensure that Bourke got her share of the fees from those cases, and she fulfilled that obligation. Bourke's claim to an interest in the actual client files, boiled down to essence, amounts to an

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3* contd. for purposes of this litigation another check with less restrictive language on it for the one actually sent to her. The assertion is based on nothing more than her after-the-fact conjecture and falls of its own weight.

assertion of a property interest in the paper generaged in the cases that has virtually no meaning outside of her vendetta against Schuman. It would be standing the law on its head to find merit in it.

In light of the above finding, Bourke's cause of action against Staska and Hornof for "assisting" in the alleged conversion of their own files deserves no further comment.

The question of whether Schuman breached a duty owed to Bourke as a tenant is a closer one. She failed to pay rent on April 1, 1981 as required. Bourke claims that she also owed copying charges amounting to $8.00 and telephone charges amounting to $20.00, although she failed to substantiate either claim. Schuman asserts that Bourke's conduct at various times during the month of April so interfered with her tenancy as to constitute a constructive eviction. It is found, based

on the entire record that a constructive eviction did occur but that it did not take place until April 23, 1981, the day the police were called. Bourke is thus entitled to a pro rata share of the April rent in the amount of $470.00. Lacking proof she is entitled to nothing for either the telephone or copier charges.

2. Schuman's Cross-claims

As to Schuman's claims agains Bourke, much less need be said. Her testimony that she had an agreement for referral fees in the amount of at least 25% is the Staska and Hornof cases was credible based on all the circumstances, and Bourke's denial that this arrangment existed was not credible. It is found that she is entitled to $312.86 from the Staska case and $157.00 from the Hornof case for a total of $469.86.

Her contention that she had an oral contract of employment which Bourke breached is not persuasive. As of April 23, 1981, the date she moved out of her

office, she was no longer an employee of Bourke's. She did have a valid claim for the unpaid $305.00 voucher, but she had also failed to pay the required rent, as noted above. Thus, Bourke is obligated to pay the voucher sum, and it is found that Schuman lawfully withheld that amount from the Staska fees. But it cannot be concluded, in the face of Schuman's failure to pay rent, that the expenses involved in Schuman's relocation of her offices are chargeable to Bourke.

Schuman's contention that she has been defamed and that she has been the victim of intentional infliction of emotional distress are each meritorious and will be discussed briefly. First, as noted, Bourke has written and spoken to various persons and entities repeatedly about Schuman. Each of these communications has been studied carefully, and it is found that time and time again they contain utterances which are patently untrue, gratuituous,

malicious and decidedly injurious to Schuman's reputation as an attorney. The statements quoted in Part I above are but a very few selections from an unrelenting stream of invective that goes way beyond even the most agressive hyperbole which might be permitted an advocate. Bourke's claim that these statements were made in the course of or in preparation for litigation and therefore privileged is rejected. In the first place, many of them were made long before the litigation commenced. Second, Ms. Bourke has, by her intemperate and unjustifiable language, thoroughly abused and therefore lost the protection of any applicable privilege. Compensatory damages are awarded Schman in the amount of $2,500.00. It is found that Bourke's actions were malicious and oppressive. Punitive damages in the amount of $5,000 are thus awarded.

Similarly, it is abundantly clear that Bourke's behavior towards Schuman

throughout was sufficiently outrageous to constitute the tort of intentional infliction of emotional distress. Because of Bourke's conduce Schuman has had to explain herself to 1) the police, 2) the bar, 3) the Social Security Administration, 4)her clients, 5) her current employer, and 6) at least one other individual who hadn't been even thinking of employing her but who Bourke contacted anyway. She testified credibly that this caused her extreme fear, anxiety, loss of sleep, migraine headaches and other forms of severe discomfort. She is entitled to compensatory damages in the amount of $2,000.00. Once again it is found that Bourke's actions were oppressive and malicious. The sum of $5,000.00 in punitive damages is awarded.

AWARD

As discussed above, Bourke is entited to the sum of $70.00 against Schuman for rent from April 1 through April 23, 1981. Nothing is awarded on any other claim

against Schuman and nothing is awarded against either Staska or Hornof. Schuman has been holding the Hornof fee of $628.00 in her trust account since Bourke returned it to her. Bourke is entitled to have these amounts, totalling $698.00 set off from the amounts awardes Schuman described below.

Schuman is entitled to referral fees totalling $469.86 on the Staska and Hornof cases. Additionally she is entitled to the $305.00 owed on the April 22, 1981 voucher. Since she deducted that amount from the Staska payment, it need not be included here. Schuman is also awarded $2,500 in compensatory damages plus $5,000.00 in punitive damages in her defamation cause of action and $2,000.00 in compensatory damages plus $5,000.00 in punitive damages on her final cause of action.

Schuman is thus awarded a total of $14,969.86 against which Bourke may set off $698.00 for a net award to Schuman of $14,271.86.

Bourke is to pay each Defendants's costs.

Dated: June 21, 1985

s/John M. True
John M. True III
Arbitrator

Patricia M. Bourke
Attorney at Law
6572 Lucas Ave.
Oakland, Ca.

William Gibbs, Esq.
449 15th St. Ste.406
Oakland, Ca. 94612

Robert W. Brower, Esq.
400 Webster St. Suite 200
Oakland, Ca.

John M. True, III
625 Third Street
San Francisco, Ca.

MUNICIPAL COURT FOR THE OAKLAND-PIEDMONT JUDICIAL DISTRICT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

Bourke

Plaintiff(s)

No. 389281

Schuman, et al

Defendant(s)

Minutes
Minute Order

Department: 14 Judge: Roderic Duncan

Cause Called for

Plaintiff Patricia Bourke appearing by attorney R. W. Brower

Defendant appearing by attorney W. Gibbs

Court Reporter Renee Dayce

It is ordered that the Petition of Plaintiff to vacate Arbitration Award be and is DENIED.

Minutes of Nov. 7 1985

Entered on Nov. 7 1985

George R. Dickey, Clerk

By s/ G. Sabella
Deputy Clerk

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013a(3), 2015.5

On the date shown below, I served the foregoing document by depositing a true copy thereof enclosed in a separate sealed envelope, with the postage thereon fully prepaid, in the United States mail box at 600 Washington Street, Oakland, California each of which envelopes was addressed respectively to the persons and addresses shown.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/8/85 at Oakland, California

Raymond G. Wright
Frost & Wright
3053 Castro Valley Blvd.
Castro Valley, Ca.

George R. Dickey, Clerk

By s/ G. Sabella
Deputy Clerk

Attorney at Law
6572 Lucas Ave.
Oakland, Ca.

449 15th St. Ste.406
Oakland, Ca. 94612

MUNICIPAL COURT FOR THE OAKLAND-PIEDMONT JUDICIAL DISTRICT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

Bourke

Plaintiff(s)

No. 389281

Schuman, et al

Minutes
Minute Order

Defendant(s)

Department: 14 Judge: Roderic Duncan

Cause Called for Motion for Reconsideration etc.

Plaintiff Patricia Bourke appearing

Defendant appearing by attorney W. Gibbs

Court Reporter Dana LaTrielle

It is ordered that the motion of Plaintiff for reconsideration/renewal of motion to vacate Arbitration Award be and is DENIED

Minutes of Dec. 8 1985

Entered on Dec. 8 1985

George R. Dickey, Clerk

By s/ G. Sabella

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013a(3), 2015.5

On the date shown below, I served the foregoing document by depositing a true copy thereof enclosed in a separate sealed envelope, with the postage thereon fully prepaid, in the United States mail box at 600 Washington Street, Oakland, California each of which envelopes was addressed respectively to the persons and addresses shown.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/9/85 at Oakland, California

George R. Dickey, Clerk

By s/ G. Sabella

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Date: 8/25/86 Hon. Benjamin Travis, P.J.
Winton McKibben, J.
Mark Eaton, J.

Deputy Clerk Charlene Goff

Appellate Dept. 28

Nature of Proceedings:
Appeal on Judgment

Action No. 1460
Muni. No. 389281

In the above entitled action oral argument presented, the court orders the case affirmed. 3-0 Remittitur to issue.

The Court further orders the matter set for hearing 10-17-86 at 2:00 pm in the Appellate Department of this court. The hearing is to determine if sanctions should be imposed pursuant to CCP 907; Briefs should be filed by 9-30-86.

Copies of this minute order mailed this date to:

Richard Jones
286 Santa Clara Ave.
Oakland, Ca.

William Gibbs
1955 Mountain
Oakland, Ca.94611

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Date: 8/25/86 Hon. Benjamin Travis, P.J.

Deputy Clerk Jeffrey K. Jue

Appellate Dept. 28

Nature of Proceedings:
Appeal on Judgment

Action No. 1460

In the above entitled case appellant's request for rehearing is denied as will as request for certification to the district court of appeals.

Rehearing denied 3 to 0

Certification denied 3 to 0

Copies of this minute order mailed this date to:

Richard Jones
Patricia M. Bourke
286 Santa Clara Ave.
Oakland, Ca.

William Gibbs
1955 Mountain Blvd.
Oakland, Ca.
94611

COURT OF APPEAL IN AND FOR
FIRST APPELLATE DISTRICT
DIVISION FIVE

(Filed 10/29/86)

PATRICIA M. BOURKE,

Petitioner,

vs.

SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent,

JEANNE SCHUMAN,

Real Party in Interest.

BY THE COURT

The petition for writ certiorari is denied

dated: Oct. 29, 1986

s/ Low, P.J.

AFTER JUDGMENT BY THE COURT OF APPEAL

1ST DISTRICT, DIVISION 5, NO. A036655

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK (Filed 12/17/86)

BOURKE, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF ALAMEDA, Respondent; SCHUMAN, Real Party In Interest.

Broussard, J., DID NOT PARTICIPATE

Petition for Review Denied.

Bird

Chief Justice.

(THE FOLLOWING ARE THE FOURTH AND FIFTH CAUSES OF ACTION SET FORTH IN SCHUMAN'S AMENDED CROSS-COMPLAINT FILED 6/22/84 WHICH ARE THE CAUSES OF ACTION CONCERNED WITH HER ALLEGATIONS OF DEFAMATION AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

FOURTH CAUSE OF ACTION
DEFAMATION

37. Cross-Complainant Schuman incorporates by reference paragraphs 1-7; 9-16; 19-28.

38. Schuman is ignorant of the true names and capacities of Cross-Defendants sued herein as Does I through X inclusive, and therefore sues these Cross-Defendants by such fictitious names. Schuman will amend this complaint to reallege their true names and capacities when ascertained. Schuman is informed and believes and therefore alleges that each of the fictitiously named Cross-Defendants are responsible in some manner for the occurrances herein alleged and that Schuman's damages as herein alleged were proximately caused by their conduct.

39. Cross-Defendants, Doe I through X, at all times herein mentioned were the agents and employees of their co-cross-defendant Patricia Bourke and in doing the things

herein alleged were acting within the course and scope of such agency and with the permission and consent of their co-cross-defendant.

40. At all times herein mentioned, Schuman has resided and maintained her occupation in the City of Oakland, and for five years has enjoyed a good reputation both generally and in her occupation as an attorney.

41. That on or about May 19, 1981, Schuman was offered a full-time attorney position with the law offices of Mintz, Giller, Himmelman & Mintz and has been employed since June 1, 1981 as an associate of said firm.

42. On or about May 26, 1981, Bourke, Does I through X, published a letter to David A. Himmelman of the law firm of Mintz, Giller, Himmelman & Mintz, which stated in part "...I am cognizant of the possibility that inasmuch as Ms. Schuman left my employ under very adverse circumstances, she may have invented, twisted or exaggerated "her"

remarks for her own spiteful purposes." A copy of said letter is attached hereto as Exhibit A1 and incorporated by reference.

43. Said letter was received by the law firm of Mintz, Giller, Himmelman & Mintz on May 27, 1981.

44. On or about October 20, 1981, Bourke, Does I through X, again published a letter to David Himmelman of the Law Firm of Mintz, Giller, Himmelman & Mintz which stated in part that Schuman "forcibly took files from (her) secretary" which necessitated calling the police, made misrepresentations to clients, was terminated from Bourke's office and improperly used firm money. Said letter is attached hereto as Exhibit A2 and incorporated by reference.

45. That Bourke, Does I through X, published the following series of letters to Schuman's client Jean Staska which stated in part that:

(a) April 23, 1981 letter - "cross-complainant had been assigned by (cross-defendant) to undertake Mrs. Staska's

representation and has no further authorization or authority to represent you in any way.." The foregoing is only an excerpt of said letter which is attached hereto as Exhibit B1 and incorporated by reference.

(b) April 29, 1981 letter - that Schuman has been both "indiscreet and unprofessional", "unethical and improper", terminated by Bourke for undisclosed reasons, "been acting against the interests of the firm for some time", "empty", "childish", and "spiteful". Bourke further stated that Schuman "virtually stole (Ms. Staska's) file and the file of another social security case which necessitated calling the police "who were satisfied after I showed them my records, the files, in fact, belong to the firm." The foregoing are only excerpts from said letter which is attached hereto as Exhibit B2 and incorporated by reference.

(c) September 10, 1981 letter - that Schuman "took out of the (attorney fees in

Staska matter) what she liked and sent the rest by a check which bounced. She is now making threats to take money from the other social security check which involves another case. In the meantime, even though they admit that I was employing attorney, SSI sent me a letter saying they would tell me nothing..." "Ms. Schuman stole your file.." The foregoing are only excerpts from said letter which is attached hereto as Exhibit B3 and incorporated by reference.

(d) September 23, 1981 letter - that Schuman was "cheating her employer". The foregoing is only an excerpt from said letter which is attached hereto as Exhibit B4 and incorporated by reference.

46. That Bourke published the following series of letters to Schuman's client William Hornof which stated in part that:

(a) April 23, 1981 letter - Schuman "...had been assigned by (cross-defendant) to undertake (Mr. Hornof's) representation and has no further authorization or authority to represent you in any way.." The foregoing

is only an excerpt of said letter wich is attached hereto as Exhibit C1 and incorporated by reference.

(b) September 9, 1981 - Schuman was terminated by Bourke "for not giving good quality service to clients on a regular basis" and "did not properly handle files" and that Schuman has "shown herslf to be vicious and dishonest", "spiteful" and "stealing fees from her" and that Schuman "was taking fees which were not rightfully hers". The foregoing are only excerpts of said letter which is attached hereto as Exhibit C2 and incorporated by reference.

47. Each and every one of the foregoing statements contained in paragraphs 42, 44, 45, 46 are false as they apply to Schuman.

48. That at all times herein mentioned each and every publication contained in Paragraphs 42, 44, 45, and 46 was unsolicited.

49. Each such statements and letters contained in Paragraphs 42, 44, 45 and 46 are libelous on its face. It clearly

exposes Schuman to hatred, contempt and ridicule becaue said language accuses Schuman of criminal acts and being dishonest in her profession.

50. On information and belief, it is alleged that Bourke and Does I through X made the foregoing statements to members of the Bar of California including those particular letters which were sent and read by partners of the firm of Mintz, Giller, Himmelman & Mintz.

51. As a proximate result of the above described publications, Schuman has suffered loss of her reputation as an attorney, shame, mortification, and hurt feelings all to her general damage.

52. Said letters addressed to Mintz, Giller, Himmelman & Mintz, Staska and Hornof (Exhibits A-C), did additionally contain information regarding Schuman's private affairs.

53. That the aforementioned statements were made by cross-defendants with an evil motive and malice, willful and wrongfully

with the intent to injure, disgrace, gain an unfair business advantage and to defame Schuman with wonton and reckless disregard for the truth or falsity of statements made. Furthermore, any such statements were made by cross-defendants with more intensity than justified by the facts surrounding the dispute with Schuman.

54. As a proximate result of each and every publication described herein, Schuman has suffered loss of her reputation, shame, mortification and hurt feelings all to her general damage.

55. That cross-defendants's actions were intentional, reckless, oppressive, outrageous, malicious and were done with the intent to harem Schuman in her professional reputation and general health. Therefore, Schuman requests puntive damages against Cross-Defendants in the sum of $15,000.00.

WHEREFORE, Cross-complainant Schuman prays for judgment against Cross-Defendants as hereinafter set forth.

FIFTH CAUSE OF ACTION INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

56. Cross-complainant Schuman incorporates by reference paragraphs 1-55 of this complaint.

57. That as set forth hereinabove, Bourke (1) breached contracts with Schuman; (2) made untrue and defamatory statements to clients, employers, and members of the legal community about Schuman, and (3) published private materials about Schuman to Schuman's clients and employers. That in addition, on April 23, 1981, (4) Bourke and Does I through X called police and requested that they arrest Schuman on false charges of theft and (5) prevented Schuman from use of her office. Furthermore, said cross-defendants (6) contacted Schuman's employers at a time when Shuman had terminated her employee/employer relationship with Bourke with acrimony and Schuman's future with her new employers had not yet become secure.

58. That at all times herein mentioned all statements made by Bourke to the police,

Schuman, clients, employers and members of the bar were unsolicited.

59. that the aforementioned statements and acts by Bourke were intentionally done/made by Bourke with evil motive and malice, willful and wrongful and with the intent to injure, disgrace, gain an unfair business advantage and to defame the Cross-complainant Schuman and in particular, were intended to cause Schuman great emotional distress, worry and shock to her nervous system.

60. That as a proximate result of the aforementioned acts/statements by Bourke, Schuman was caused to worry about losing her job and reputation in the legal community which did result in Schuman suffering severe shock to the nervous system and mental distress.

61. That said Bourke's actions were intentional, reckless, oppressive, outrageous and malicious and were done with the intent to harm Schuman of which results said Bourke was cognizant would be likely.

Therefore, Schuman requests punitive damages against cross-defendants in the sum of $15,000.00.

WHEREFORE, Cross-Complainant Schuman prays for judgment against Cross-Defendants as follows:

1). General damages according to proof;

2). Breach of contracts in the sum of $733.50 plus interest;

3). For exemplary and punitive damages in the sum of $15,000.00 not to exceed the court's jurisdiction.

5). Costs of suit herein;

6) Pre-judgment interest at ten percent (10%) per annum pursuant to the provisions of the California Civil Code Sec. 3291 and California Code of Civil Procedure Sec. 998.

7) Such other and further relief as the court may deem proper.

Dated: June 22, 1984

s/ William D. Gibbs
William D. Gibbs

LAW OFFICES OF

PATRICIA M. BOURKE

JEANNE M. SCHUMAN
SALLY A. SKLAR

PATRICIA M. BOURKE

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AREA CODE 415
(OFC.) 465-9441
(RES.) 339-9705

May 26, 1981

David A. Himmelman
Mintz, Giller Himmelman and Mintz
A Legal Corporation
405 14th Street
Oakland, California

Dear Mr. Himmelman:

It is my understanding that you have recently hired Jeanne Schuman as a new associate in your firm. She imparted this information in a recent telephone conversation with my associate, at which time she also chose to make remarks to the affect that you had deliberately not called me for a reference because you were aware of my reputation and that you fully understood why she (Jeanne Schuman) had had problems in trying to deal with me!

At the time of hearing this, I was not even sure who you were. I could not recall even ever having had a case with you. Upon

Exhibit "A"

A44

looking up your picture in a bar directory, I vaguely recall cordially speaking to you on occasion in court. However, I certainly had no negative recollections of any encounter with you which could have provoked such derogatory remarks about me. Consequently, I am left totally baffled.

As any experienced attorney is fully aware, we often encounter one another in an adversarial context with the occasional, attendant unpleasant circumstances, and sometimes we are resultantly left with bad feelings about one another. However, I am particularly disturbed to learn that I have apparently made an enemy and cannot even recall the context or situation. If I have offended you in some way in the past, I would appreciate hearing from you as to why and how so that I might make an appropriate apology.

In the meantime; I am cognizant of the possibility that inasmuch as Ms. Schuman left my employ under very adverse

circumstances, she may have invented, twisted or exaggerated your remarks for her own spiteful purposes. If that were the case, then I believe that you ought to know of her misuse of your name and of her attempt to provoke bad feelings. I would appreciate hearing from you regarding these matters. Feel free to call me at your convenience.

Sincerely,

Patricia M. Bourke

LAW OFFICES OF

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AREA CODE 415
(OFC.) 465-9441
(RES.) 339-9705

October 20, 1981

David Himmelman, Esq.
405 14th Street
Oakland, California Re: Jeanne Schuman

Dear Mr. Himmelman:

Events subsequent to our last communications relative to the referenced individual have made it necessary for me to communicate with you again. Since I have no knowledge as to the details of Jeanne Schuman's employment with you, there is a possibility that you and your firm may be a necessary party in litigation with I will shortly be filing against Ms. Schuman. Consequently, rather than naming your office as a co-defendant, I thought it expedient to first inquire a to whether or not your firm is in any manner involved in the activities undertaken by Ms. Schuman since she entered your employ.

Exhibit A1

A47

If Ms. Schuman is a full-time associate with your firm, with no independent practice, then it would seem that you as her employer are a necessary party to litigation I will be filing. The dispute between myself and Ms. Schuman (and possibly you as her principal) involve two Social Security cases wherein Ms. Schuman represented the clients as my associate. Upon leaving my employ, she forcibly took both files from my secretary making it necessary for us to call the police. She thereupon contacted both clients and made statements and representations that she and not the firm was their attorney. Shortly after being terminated by me, she procured a written statement from one client (based upon her own misrepresentations) that he was not a client of the firm and that she and not I was entitled to the files. She took the fee from the one case, endorsed and negotiated the check and thereafter paid me what she considered my share of the fee by a check

which bounced twice. In making her computations she failed and refused to pay rent on a small office I had rented to her after discharging her as my associate. In effect, she took firm money and applied it as she saw fit...after apparently having made use of it for some as yet undisclosed period of time. I am informed and believe that as a result of the adverse claims made by her, my firm has never received the fee on the one case although the work was completed and the application for attorney fees filed last Fall. Whether she has also taken this fee, I do not know.

Because I cannot believe that you would condone, much less be involved in such activities, I am writing you about the matter before naming you as a co-defendant. I do not wish my complaint to be demurrable by reason of having omitted a necessary party.

Additionally, I am mindful of the very real possibility that you may hear a

distorted version of what occurred between Ms. Schuman and myself, particularly after she has been served with the litigation. Consequently, I wish to set the record straight as to what eivdence I have that Ms. Schuman has acted improperly and that these clients were clients of my firm. The items of evidence are as follows:

1). I have her time record in her own handwriting where she computes the hours spent on the two (specifically named clients) and then on that basis computes how much I owe her for the pay period. I have several such documents, if you are interested in seeing them let me know.

2). I have a cancelled check where the physician report for one client was paid from my account.

3). I have her letter to me attempting to account for the fee paid to her on the one case and enclosing a check for the bulk of the fee. Why would she have found it necessary to pay the bulk of the fee to me if it were her client?

4). My former associate and my former secretary are prepared to testify under oath to various conversations where Ms. Schuman clearly acknowledged that the specific clients were mine.

5). In the case of one of these clients she filled out the Application for Fees characterizing herself as an associate of mine. Also the files she took from my office contain copy after copy of correspondence on my letterhead showing her as an associate.

6). All Ms. Schuman had to substantiate her claims is her own naked assertion and a statement signed by the client shortly after she was terminated from my office which states he thought she was his attorney and that she could have the files.

Having apparently communicated with my clients after being terminated from my firm without my knowledge or consent, she now presumes to characterize them as her own. Does she do this as a representative of your firm? Recently, she has also sent me a

letter threatening me with State Bar complaint if I contact "her" clients. Does she do this as a representative of your firm? She did this on your stationery, hence it is possible that your firm is involved in this controversy.

As an attorney associated in what appears on your letterhead to be a firm, I am sure you realize that this sort of conduct cannot be tolerated or condoned. It is my intention to pursue this matter through all available channels including the State Bar. Hopefully, Jeanne Schuman is taking these actions entirely on her own and without any association with your firm. Consequently, I would ask that you communicate with me relative to your and/or your firm's involvement, if any.

Please also bear in mind that upon your request, I will provide your with any documentation mentioned in this letter to prove whose clients those were. Jeanne Schuman was promised no part of any fee

involved and she was fully paid for all services rendered. If she tells you to the contrary, I trust you will give me the opportunity to demonstrate the true facts are otherwise.

Sincerely,

Patricia M. Bourke

PATRICIA M. BOURKE
JEANNE M. SCHUMAN
SALLY A. SKLAR

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AREA CODE 415
(OFC.) 465-9441
(RES.) 339-9705

April 23, 1981

Jean P. Staska
22838 Alice Street
Hayward, California Re: Social Security
Claim

Dear Mrs. Staska:

This letter is written to advise you that my associate, Jeanne Schuman who was assigned by me to undertake your representation in connection with the Social Security Claim(s) is no longer in my employ, and accordingly has no further aurhorization or authority to represent you in any way.

If you have further need for services or questions about this matter, please feel free to communicate with my office.

Sincerely,

Patricia M. Bourke

Exhibit B1
A54

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AREA CODE 415
(OFC.) 465-9441
(RES.) 339-9705

April 29, 1981

Mrs. Jean P. Staska
22838 Alice Street
Hayward, Ca. 94541 Re: Jeanne Schuman
and Soc. Sec.

Dear Mrs. Staska:

You will have already received a letter from my office relative to your representation and the fact that Jeanne Schuman was no longer employed with me. Since then, I have received information to the affect that Ms. Schuman had taken it upon herself to contact you. I am informed that as a result of something you were told that you were "horrified" at what I was doing!!

While it is highly unusual for attorneys to involve clients in intra office disputes, it appears that Ms. Schuman has been both indiscreet and unprofessional

Exhibit B2
A55

enough to do so thereby making it necessary to defend myself and to explain a few things to you.

In the first place, the ordinary person has had little experience with attorney's offices generally, and consequently has little understanding of how law firms operate with respect to other attorneys who work for them. The typical situation involves a client being referred either to the firm generally or to an attorney with a firm. Even if the person is referred to a specific attorney in a firm this would result in that person dealing nearly exclusively with that attorney. That attorney would sign all papers, would meet with the client and would establish an attorney/client relationship with him or her along with attendant rapport. Typically, the client may rarely if ever see the owners of the firm who are, in effect, the employer of the attorney who deals with the client. However, in this context, it is in no way proper for the attorney representing the

client to impart the idea that the attorney is representing the client in his/her individual capacity as separate and apart from the firm. Occasionally, younger attorneys who are overly ambitious take advantage of the situation and seek to alienate the client from the firm with the thought of one day taking the client for their own when and if they separate from the firm.

Although you may have had little experience with the intracacies of the operation of a law office, I would assume at one time or another you hired someone to do something for you. In so doing, I am sure you had a right to expect that the person would do the job for which they were hired and that they would do nothing against your interests while working for you. While one is employed by another it woould seem that this expectation ought to be the very least one could expect. This situation is even more intensified when professional, supposedly ethical persons are involved. By

the same token, it is the responsibility of the owner of a law office to see to it that attorneys employed by him/her perform their jobs in a competent and timely manner. When an attorney ceases to so function, the client's welfare is endangered and the attorney must be terminated.

At all times Jeanne Schuman represented you, she was employed and paid by me. If she ever gave you any impression to the contrary, then all I ask is for you to review the time sheets which are attached showing the hours charged to me on your behalf. Therefore, if she has told you anything different from this she has acted unethically and improperly and demonstrates one among many reasons why she is no longer to be employed by me. I am sure your experience with her was friendly and satisfactory, however, your matter was able to be concluded in a relatively short time with a minimum of technical matters to attend to. Hence, I hope you will keep this fact in mind when you evaluate her and my

relation to her. On the other hand, I worked with her over a year and was able to observe her functioning in many different situation. Obviously, it is not appropriate for me to go into any details or to further explain my reasons for terminating her as my associate.

I am also concerned about another episode which Jeanne Schuman called to my attention when we spoke about your matter. I recall an occasion when you were in my office regarding a Will and I happened in and spoke a few words attempting to assist both you and Jeanne. Jeanne now tells me (attempting to hurt me) that you resented my coming into the room and wondered who I was and who I thought I was!! If you actually said something like that, then I must conclude that Jeanne Schuman has been acting against the interests of the firm for sometime, and that she must have deliberately given you the impression that I was some sort of an "interloper" rather than her employer and your attorney.

Unfortunately, the situation now existing between Ms. Schuman and myself is not limited to unpleasant words. Undoubtedly because of bureaucratic delays, my office has not been paid anything whatever for handling your case. Our fees were to have been sent to us by the Social Security Administration weeks ago. Contrary to our relationship and in an attempt to force me to forego certain sums Ms. Schuman owes me, the threatened to lay claim to all or part of the fees I have waited so long to receive. I am not particularly concerned about this aspect of the matter since I have numerous documents most in her own handwriting which demonstrate quite clearly that she performed all the services for you as my associate. Her attempt to lay such a claim is childish at best. However, aside from such threats, she came into my suite today and virtually stole your file and the file of another social security case right out from the desk of my secretary. When my secretary demanded that she return the

files, she declined! This act is likewise an empty, childish, spiteful gesture inasmuch as the entitlement to the fees is a question of fact and has nothing whatever to do with whom may have the files at the moment. However, as I am sure most people can understand, one cannot permit another person to take things which do not belong to them. When Ms. Schuman responded to our request for a return of the files, we were met with impudence and arrogance and more threats. I called the police who were satisfied after I showed them my records that the files, in fact, belonged to the firm. They took no action immediately, however inasmuch as they first wished to consult with the District Attorney's Office before pressing charges.

Having to write a client such a letter is necessarily disconcerting and embarrassing to me. This places me in the awkward position of having to communicate with a virtual stranger whom believes that her real attorney was Ms. Schuman. No

doubt, you feel loyalty and concern for her. However, I do hope you will keep an open mind, and realize that you may have been proceeding with an inaccurate impression of what was occurring. You may be assured that had Ms. Schuman remained discreet and acted properly in this matter, I would not have found it necessary to in any way involve a client in office problems. Certainly, we all try to hire people to work for us who are compatible and discerning..sometimes it just doesn't work out like we plan.

My purpose has never been to hurt Ms. Schuman. But, I obviously cannot tolerate the inaccurate statements she has made nor can I permit the removal of files and documents from my offices which do not belong to her. I would certainly be willing to speak with you further about this matter if you wish. Since I believe the services to be rendered in your matter have been concluded for sometime, it is unlikely that you would be faced with any choices or decisions in the near future. However, you

could hardly expect me not to defend myself or to fail to bring the dispute regarding your file to your attention. At this point, I just ask that you reserve judgment and that you make no further statements which encourage Ms. Schuman in the impudent course of action she has chosen to undertake.

Sincerely,

Patricia M. Bourke

PATRICIA M. BOURKE
JEANNE M. SCHUMAN
SALLY A. SKLAR

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AREA CODE 415
(OFC.) 465-9441
(RES.) 339-9705

September 10, 1981

Mrs. Jean Staska
22838 Alice Street
Hayward, Ca. 94541

Dear Mrs. Staska:

Unfortunately, I find it necessary to write to you again. This comes about as a result of things which have happened since I last wrote. In spite of my notice to Social Security, they paid the entire attorney fee to Ms. Schuman. She took out of the fee what she liked and sent me the rest by a check which bounced! She is now making threats to take money from the other Social Security check which involves another case. In the meantime, even though they admit that I was the employing attorney Social Security has just sent me another letter (after a five month delay where I heard nothing) saying they would tell me nothing (dates, amounts

sent etc.) because only Jeanne Schuman's name appeared on the papers. They cite the "Privacy Act" as a basis for making this refusal. Apparently, they are protecting the privacy of the client. This is indeed an odd interpretation of law when one considers that they are apparently in the same breath acknowledging that Jeanne Schuman was working for my firm when she performed the services in question!!

Consequently, because of the lack of cooperation from Social Security it appears that I will have to file suit in Federal Court naming you and the other client as defendants as well as Social Security so as to be entitled to the money due my firm and so as to be able to obtain the necessary information. However, I am told that if the client signs an authorization for me to get the information, that this may be sufficient.

In order that you be brought up to date on recent events and that you may fully understand what occurred between Ms. Schuman

and myself, I am sending you a letter which I have just prepared to send to the other Social Security claimant whose fees have never been received. I am also sending you a copy of the response from Social Security to show you how and why they refused to assist me in any way.

I am also enclosing the authorizations for you to sign to permit me to obtain the necessary information and to retrieve the files from Ms. Schuman.

Because Ms. Schumans stole your file without my knowledge or consent, I do not have you telephone number which I understand is unlisted. Hence, I am severly handicapped in communicating with you. I had hoped you would have called me when I wrote to you last April. I sent you the time records at that time which ought to have demonstrated that Ms. Schuman charged me for the time she spent on her case. Surely, you do not condone her taking any part of the attorney fee besides her salary?

Please send back the authorizations

signed by you as soon as possible. My purpose is not to upset you or to cause you undue concern. However, I have no control over Ms. Schuman's behavior, and unless I obtain client cooperation, I have no choice but to rely on the courts to protect myself expecially when I have received such an uncooperative and totally bureaucratic reply from Social Security.

I also ask that you call me on receipt of this letter, giving me your phone number should further need arise to contact you.

Sincerely,

Patricia M. Bourke

ALT

PATRICIA M. BOURKE
JEANNE M. SCHUMAN
SALLY A. SKLAR

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(RES.) 339-9705

September 23, 1981

Jean P. Staska
22838 Alice Street
Hayward, California Re: Social Security
Jeanne Schuman

Dear Mrs. Staska:

According to my records you have not replied to my letter of September 10, 1981 nor have you signed and returned to me the two documents which I sent to you. Previously, I had gone to the time and expense of sending you time records in Jeanne Schuman's handwriting when surely ought to have demonstrated to you that she was charging me for the time spent on your case. If Ms. Schuman denies, this, just what contrary documents has she supplied to you? Has she denied that these records are what I claim them to be? Have you contacted her about my letter and are refusing to send me back the papers because of something she

said to you?

I suspect you have not returned the papers to me because you "don't want to get involved". In acting in this manner, you are not only increasing the chances of my having to involve you in a lawsuit, but you are greatly increasing the amount of work and time I must spend to protect myself. My firm was never fully paid for the services we expended for you. I have no knowledge whether the amount Ms. Schuman claimed to have received was correct, nor do I know WHEN she received it. If you bothered to review the materials I sent you, it ought to have been clear that in all likelihood, Jeanne Schuman was only an employee of my office when she represented you. Does it not seem only fair then that I not be put to an inordinant amunt of trouble to learn the basic facts about what fees were paid? These are simply matters of common sense and right and wrong. Surely, you are not attempting to assist Jeanne Schuman to cheat her employer! If Jeanne Schuman is innocent

of any wrong-doing with respect to your case or your file then she ought not to object to my obtaining such simple, basic information. If you wish Jeanne to have your file, then the proper, professional method to accomplish this is to allow me to retrieve it, make what photos I need and return it to you...you may then do with it as you choose. Associate attorneys are never permitted to "snatch" files out of the employing attorneys office as she did.

Certainly, if you are troubled by my request and wish to speak with me, I have told you several times to call me. You do not call. Yet you do not respond to my letters. Do not make it necessary for me to sue anyone about this matter...please do as I ask, or at least, call me so we can discuss this matter further. The request I made is a simple one and one which fairness and right requires that you consent to IF you are interested in doing right.

Sincerely,

Patricia M. Bourke

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(RES.) 339-9705

April 23, 1981

William Hornof
4444 Sargent Ave.
Castro Valley, Ca. Re:Social Security Claim

Dear Mr. Hornof:

This letter is written to advise you that my associate, Jeanne Schuman who was assigned by me to undertake your representation in connection with the Social Security Claim(s) is no longer in my employ, and accordingly has no further authorization or authority to represent you in any way.

If you have further need for services or questions about this matter, please feel free to communicate with my office.

Sincerely,

Patricia M. Bourke

Exhibit C1

A71

LAW OFFICES OF
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AREA CODE 415
(OFC.) 465-9441
(RES.) 339-9705

September 9, 1981

Mr. William Hornof
4444 Sargent Ave.
Castro Valley, Ca. 94546

Dear Mr. Hornof:

Thank you so much for talking to me by phone regarding the problems I am having with Jeanne Schuman and with Social Security. I realize that your only contact with my office was through Ms. Schuman and that you were probably on good terms with her and felt kindly toward her. On the other hand, having had no personal contact with me, you would not be readily disposed to accept the things I was forced to reveal to you. You must realize that no practicing attorney likes to have to involve her clients in any unpleasantness which involves other counsel who were employed by her.

Exhibit C2

A12

Consequently, it is with much embarrassment and regret that I find myself having to not only tell you these things, but to attempt to enlist your cooperation. However, as you will hopefully understand after reading this letter, I was really left with little other choice.

Ms. Schuman at all times while working on your case was an employee of my office. She was paid on a weekly basis a salary which paid her in full for all services she performed for you. In order that you need not just take my word for this fact, I am enclosing copies of her time records wherein she would show me what she did each week for each client and the amount of time spent. I would, in turn, pay her a check for the time based upon these time records. Another woman attorney worked for me on the same basis during the time in question and has assured me that she would testify that Jeanne Schuman was only an employee and was entitled to no part of the fee which was to have been paid by Social Security on your

behalf. I also have a cancelled check wherein we paid for your physician's report off of my checking account. I will enclose a copy of the check if I can locate it before this letter is mailed.

About the same time she was working on your Social Security claim, another claim was also being processed (Staska) by her. Both these claims were being handled on the same financial basis with Jeanne Schuman being paid a salary and any fee paid by Social Security belonging only to my firm.

As I am sure you are aware based upon your own experience, sometimes employees just do not work out and do not always perform satisfactorily. This became increasingly true of Ms. Schuman during the latter part of 1980 and early 1981. Up to that time our relations has always been cordial. Obviously, as the primary attorney in the office and her employer, I must terminate her if she is not giving good quality service to the clients on a regular basis. However, rather than fire her, I

told her I would rent her an office next to mine and would permit her to conclude the services needed on several pending cases with all new cases to be handled by others. Finally, and during March, April 1981 it appeared that she was not even properly handling the few cases I had left her to do. I asked her to move out of my offices entirely and to return all the files.

It was then for the first time that Ms. Schuman showed herself to be vicious and dishonest. She presented her final pay voucher to me and demanded payment. She owed me a month's rent, she owed for having used my copy equipment on her own cases, she owed a phone bill (I having generously allowed her to use my phones for her own cases), and I genuinely believed she was charging me (spitefully) for more time than she had actually spent on a couple of items. I told her ALL claims I had must be settled at the same time and that I would pay her only the balance due her after deducting for the rent which she owed me. She angrily and

defiantly refused saying that I was to pay her all I owed her and she would pay the rent "later". When I refused, she told me that she would then lay claim to BOTH the fees from your case and from the Staska case and that inasmuch as she had signed the papers as the official "attorney" Social Security would pay her instead of me!! She also claimed that I had agreed to pay her some sort of commission on the Social Security cases (an outright lie). So, I asked her just how much was it I was supposed to have agreed to. She replied "...well, I guess the amount of the rent".

Immediately after hearing these threats, I made numerous telephone calls to Social Security to try to protect myself. I was given several addresses back East where the attorney fees are paid from. I immediately wrote to them and informed them that no fees were to be paid to Ms. Schuman and that if they did not want to pay me, the fees should be held so that I could satisfy them that I was the person entitled. This occurred in

April 1981. In June I received a letter from Ms. Schuman enclosing a check for $946.32. She had in spite of the notice I gave Social Security received the fees from the Staska case, had deducted every cent she claimed I owed her, paid nothing for rent, and you will note THREATENED TO HANDLE THE HORNOF FEES IN THE SAME MANNER!!! When I attempted to cash her check, it bounced (letter from her bank enclosed)! Hence, it is clear that Ms. Schuman admits the fees belonged to my office, but she apparently intends to receive them and to take out just as much as she pleases! Even though I was eventually able to negotiate her check, it is also clear that she was using my money and paying it over to me when she pleased.

At this point, you can imagine my total dismay at Social Security for having disregarded my notice. It also occurred to me that she just might have received the Staska fees long before any dispute arose and had been using my money all along without informing me. Consequently, I again wrote

to Social Security (none of my letters having been answered) and asked whether the Hornof money had been sent to her, what amount was sent, and when it was sent. I also asked the same questions relative to the Staska money inasmuch as I am otherwise left to trust in what she tells me about the amount she had received. To the extent she received the fees and did not pay them over to me, it would seem that the fees would be continue to be owed by the client, by Social Security or by both. This is especially apt to be the case if the checks were sent to her AFTER my letters notifying them were received.

After some five month, I received the enclosed reply from Social Security which in effect told me nothing. They refused to say whether any other money had or would be disbursed to her, they refused to tell me when the Staska money had been disbursed or the amount, and they claimed the "Privacy Act" prevented them doing so. You will also note that they acknowledge in the same

breath that Ms. Schuman was a "member of my firm"! Consequently, I believe that Mr. Cooper just does not know the law, but he is doing all he can to get rid of me and my problem. Unless, I can obtain the necessary information through the cooperation of the clients involved, I will be left with no choice but to file suit in Federal Court naming both clients, Ms. Schuman and Social Security. As I understand it if the clients sign an 'authorization then the Privacy Act cited by Mr. Cooper is waived and I can determine just what she has done to me. Rather than attempting to resolve this matter and to do what is right, Social Security has intensified the problem and has caused me to have to write to you. Unfortunately, this sort of response I have found all too typical of civil service.

You should also know that before Ms. Schuman left my offices, she saw the Hornof and Staska filed laying on my secretary's desk and snatched them away from her! The police were called when she refused to

return them, but they refused to do anything because she claimed to the police she had some sort of right to them. She also told us that the clients had told her it was allright to take them! Hence, the police refused to cite her for theft and advised me to file suit against her. Files such as those belong to the firm and to the client. They are by no means the property of the attorney who just happened to work on them IF that attorney was working on them as an employee. This is just the same as for example an engineer working on a project as an employee of General Motors...he has no right to take such things home and claim them...this is theft. The client may have his/her files, but only after the attorney who represented them (in this case my firm) has had an opportunity to take photo-copies of documents they may need. Obviously, Ms. Schuman deliberately accorded me no such opportunity since she wished to handicap my ability to reach you or to protecy myself.

In order to try to avoid the need for

suit being filed, I ask at this time that you sign the enclosed authorizations filling in your Social Security number where indicated. This way, I can determine whether any attorney fees arising from your matter have been disbursed to her, the amount sent to her, and WHEN it was sent. I will need the same information relative to the Staska claim. Only after I have received this sort of information can I determine what to do next about these matters.

Even though may may not wish to "take sides" or "become involved" it hopefully ought to be clear to you that I am rightfully entitled to, at least, know these details. If someone were stealing from you, you would hardly want them to get away with it. Your signing these authorizations will save me a lot of time and effort, and could do away with the possibility that you will be named in a suit shich I will have to file in Federal Court if the necessary information and money cannot otherwise be

obtained. Your signing the authorization does not mean that you are siding with me, it only acknowledges that I ought to be able to obtain the ncessary information about money which is rightfully owed me.

I am also including a statement whereby you direct Ms. Schuman to return your file to my office which I assure it belongs. If you then want your file yourself, all I ask is that you permit me to photo some of the documents in it. If you then wish Ms. Schuman to have, it would be appropriate for YOU to give it to her. It was in no way proper for her to steal it like she did.

If you have not returned the documents to me in ten days, I will have to assume that you are deliberately trying to assist Ms. Schuman to take fees which are not rightfully hers. I am enclosing a return envelope for your use. I am sure you will understand the problem I face if you do not cooperate. Feel free to call and discuss this if you wish.

Sincerely,
Patricia M. Bourke

Attorney at Law
6572 Lucas Ave.
Oakland, California
PH: 339-9705

ENDORSED FILED
7/23/85

Attorney In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA **

Patricia M. Bourke,	/	
	/	
Plaintiff,	/	No. 601138-3
	/	
vs-	/	DECLARATION OF CROSS-DEFENDANT IN SUPPORT OF PETITION TO VACATE ARBITRATION AWARD
Jeanne Schuman,	/	
	/	
	/	
Defendant.	/	

I, Patricia M. Bourke, declare and could testify to the following of my own personal knowledge under oath:

BACKGROUND FACTS - NO SUBSTANTIAL DISPUTE

The following facts were adduced at the Arbitration hearing, and except to the extent indicated involved no substantial controversy:

** The motion is initially filed in Superior Court due to confusion over the court rules. It was transferred to municipal court for disposition.

1). The clients Staska and Hornof were initially referred to Schuman by a friend of hers.

2). I was operating my law offices as a single proprietorship, I was not incorporated, nor was there ever any allegation made by anyone that Schuman had any sort of partnership interest. Schuman was at all times mentioned a full-time employee of mine.

3). She had some limited right to have a small practice of her own. However, apart from her intermittently using my office facilities, these matters were maintained separate and apart from me and my own clients.

4). There was no prior course of dealing between Schuman and myself relative to referrals.

5). The arrangement with me relative to these clients was the same as to each of them.

6). Schuman approached me relative to

making a "referral" regarding the Staska and Hornof cases. What was said or intended by this "referral" is in dispute.

7). Schuman procured Mrs. Staska to execute a "Contract for Legal Services" wherein Mrs. Staska was named as the "Client" and "Patricia M. Bourke Law Offices" was designated as "Attorney". A "Social Security Disability Claim" was indicated to be the subject matter. It was also stated in this contract that "Attorney reserves the right to employ associate counsel at her expense..." It also stated in this contract that the attorney was entitled to retain a duplicate file upon discharge. A true and correct copy of this written contract is appended hereto as Exhibit "A" and is incorporated herein by reference as though fully set forth. *1

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*1 I was able to obtain this "Contract for Legal Services" only because the client, Mrs.Staska died and the estate representative waived the attorney-client relationship. The Hornof counterpart is still concealed because of Schuman's claims of "attorney/client privilege, which claim of privilege the Arbitrator honored at the hearing...

8). Schuman submitted regular pay vouchers to me to account for the time she had spent, and repeatedly placed the names Staska and Hornof on these vouchers and received her pay from me for this time thusly accounted for. All the other names on the vouchers mentioned along with Staska and Hornof were clients of mine. True and correct copies of these vouchers are appended hereto as Exhibit "B", and each of which is in the handwriting of Ms. Schuman.

9). Schuman performed all the legal services on the two Social Security cases. I did not meet either client during the processing of these claims.

10). Throughout the processing of these Social Security cases, I paid all expenses, including the physician's report for one client, all office overhead, including Schuman's regular salary, rent, stationery, and library, etc.

11). Schuman submitted a form "Petition to Obtain Approval of Fee..." to the Social

Security Administration for Staska which contained the folllowing: "signature of Petitioner...Jeanne Schuman"; "firm with which associate if any: Law Offices of Patricia M. Bourke". On the Hornof Petition, she placed only her name on the line for "Petitioner". A true and correct copy of this document is appended hereto as Exhibit "C".

12). During the latter part of April,1981 when all the work on the two client's Social Security cases had been earned and requested, but were, as yet, unpaid, a dispute erupted between myself and Schuman relative to unrelated financial matters. During this dispute, Schuman orally threatened to take the Social Security fees and claimed that the clients were "hers".

13). That same day, Schuman took both these client's case files from my secretary's desk and refused to return them.

14). Shortly thereafter, Schuman went to

both clients and procured them to sign a statement prepared by her which stated that she, and not I, was their attorney in the two Social Security cases, and further that she was entitled to both the files and the fees. Schuman thereupon sent copies of these statements to Social Security to assist in inducing Social Security to send her the fees. True and correct copies of each of these statements is appended hereto as Exhibit "DI" and "DII" and are incorporated herein by reference. These statements of the clients of April, 1981, were not, however, made known to me until October, 1981.

15). Both Schuman and these clients thereupon interposed the objection of "attorney/client" privilege when I sought recovery of the files, when I sought information about their discussions about who was the attorney, when I sought documents sent to Social Security, or when I sought discovery of any matter regarding

the issues herein involved. These assertions of "attorney/client" privilege were honored by the Arbitrator during the hearing and whenever I sought to question either Schuman or Mr. Hornof regarding their communications concerning the attorney/client relationship.

16). Both Staska and Hornof are unsophisticated persons with little experience in dealing with attorneys or law firms.

17). According to a letter from Social Security which was admitted into evidence, the Staska fee check had been sent to Schuman "in early May". On June 1, 1981, Schuman sent me her personal check for the major part of the Staska fee. She had received and negotiated the check from Social Security, and had deducted and retained for herself the full amount she had claimed in our dispute.*2 In addition,

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*2 By the time these events occurred, Schuman had become an independent contractor and was sub-letting space from me. My claim for this rent was allowed by the Arbitrator as a set-off.

she had paid nothing to me for rent owed or other office-related expenses I claimed. When I took this check to her bank on June 2, 1981, I was unable to cash it because there was "insufficient funds" in her personal account. A statement from her bank verifying this fact was admitted into evidence.

18) Schuman stated in her letter which accompanied the Staska money (letter appended hereto as Exhibit "H" and incorporated herein by reference) that she would treat the Hornof fees in the same manner. Thereafter, and on May 24, 1982, and SUBSEQUENT to my having written all of the offending letters, she tendered the Hornof fees to me.

THE ARBITRATOR EXCEEDED THE SCOPE OF THE SUBMISSION: (Excerpts only)

The submission of this matter to Arbitration occurred at my suggestion inasmuch as there was no court available at the time set, and it appeared to me that my

action on the complaint was the only viable one inasmuch as the cross-complaint referred only to two letters to her employer and certain letters to the clients. Each of these communications were subject to either a qualified or an absolute privilege, were wholly truthful, or at the very least, I had a reasonable basis to believe in their truth. Consequently, I believed that the amount in controversy was too small to warrant the time, attention or formality of a full court trial. I had prosecuted my complaint against Schuman primarily as a matter of principle inasmuch as I did not believe a practicing attorney ought to be permitted to divert funds from her employer and misrepresent her status to clients whom she had referred to me.

I believed the only matters before the Arbitrator were those framed by the Complaint and Cross-Complaint. This belief was corroborated by the fact that months

before the arbitration occurred, the Arbitrator requested copies of both the Complaint and Cross-Complaint: "so that I may familiarize myself with the issues of the case". (Letter from Arbitrator to the parties dated March 27, 1985).

It was then my intention and continued to be my intention to submit to Arbitration only the matters contained in the within Complaint and Cross-Complaint to Arbitration, and nothing else. This is what was before the Municipal Court, and I assumed that this is what would be likewise before the Arbitrator. There was never at any time any agreement or even mention of the matter submitted to the Arbitrator being of any broader scope. Certainly, it was not my intention to grant a carte blanche to an unknown Arbitrator to decide a matter where I had any real chance of being held liable for any substantial sum, let alone thousands of dollars. There simply are not enough safeguards in Arbitration, and the Arbitrators could well

be young and unable to analyse the facts or law as well as a judge. It was certainly not my intention to permit this arbitrator to decide my liability for EIGHT OR MORE SEPARATE, DISTINCT TORTS WHICH WERE NOT PLEADED OR REFERRED TO IN ANY WAY IN THE PLEADINGS.

In point of fact, the Social Security letters referred to in the Arbitrator's decision as forming the basis for the large awards against me, were ADMITTED INTO EVIDENCE BY ME in order to demonstrate the extent of my incidential damages arising from the time I and my staff had spent as a result of the threatened conversion of the Social Security fees by Schuman.

At no time was there any offer or mention of any desire by Schuman or her attorney to amend the Cross-Complaint to state any new or different bases for her claim of defamation. At no time did he refer to these series of letters as forming the basis for anything other than what they were admitted to show (i.e.incidential

damages for conversion pursuant to C.C. 3336) Had he done so, my objections could have been registered and explained.

While the "prejudice" inherent in any hearing being handled this manner is self-evident, it is important to review the operative factors so that there will be no doubt as to the surprise and grave prejudice suffered by the Cross-Defendant.

Apart from there being no agreement to submit this sort of exposure to Arbitration, I had no NOTICE and hence no opportunity to review these letters or even try to justify or explain their content. In fact, insofar as I knew, their content was not in issue ... Likewise, I had not briefed the separate line of case law relative to privilege arising from communications with administrative agencies.

In addition, and having relied that the pleadings before the Municipal Court had established the parameters of what was before the Court and the Arbitrator, I had

made no attempt to make any claim against any insurance I may have, nor did I procure counsel to represent me. I did not prepare nor expect to have to defend any greatly expanded defamation case.

What nonetheless occurred here was that this Arbitrator HEARD, TRIED, AND DECIDED as many as SEVEN DISTINCT, SEPARATE, AND WHOLLY UNPLEADED TORTS, without so much as according any warning or notice to me of his intention to do so!!!

UNDERLYING CUSTOMS AND PRACTICES OF THE LEGAL PROFESSION: (excerpts only)

When Schuman told me she wished to refer these clients to my office, she said nothing which would indicate that anything other than an outright referral was intended. She said nothing about expecting or demanding any referral fee, and I would not have agreed to pay any "referral fee" inasmuch as the cases were relatively small, marginally profitable Social Security claims.

On the other hand, Ms. Schuman testified at the Arbitration Hearing that she was "only referring the fee", and that she wanted the "normal referral fee".

Based upon my experience, a referring attorney gives up the case, the client, the files and any resulting fees. These rights continue to reside in the attorney to whom a case is referred until there has been a formal Substitution of Attorneys.

However, when I questioned Schuman on cross-examination during the Arbitration hearing as to whether she had ever actually told me at anytime prior to our dispute in April, 1981 (when all the work was done and she had already been paid by me for doing it) that these were not "my clients", her only response was that she had referred to them as "her clients" in my presence. (Appended hereto as Exhibit "E" is an excerpt from her deposition wherein her testimony on this critical issue was very similar to what she stated during the

Arbitration). Consequently, and based upon her own admissions, no such clear explanation was ever given to me. If she were not referring the client, then why did she not put her own name on the Retainer Agreement (Exhibit "A")??

Having been given reasonable cause to believe that Schuman had made a normal, outright referral of both these clients to me, that belief, in turn, led me to conclude that when Schuman interacted with these clients, she was doing so only as my agent and employee.

Should an associate, working under such circumstances receive any fees, she would be legally obligated to immediately turn them over to her employer. She may not make even temporary personal use of such funds. Should the associate do so, it is my understanding, that the associate has misappropriated funds entrusted to her and has accordingly acted in a highly illegal and unethical fashion.

Consequently, when Ms. Schuman

threatened to take these fees and then, in fact, exercised dominion and control over them, and also misrepresented her status to both clients (Exhibits "DI" and DII"), she was comitting acts of conversion, was being dishonest and very unethical, and I felt justified in contacting the clients and others who could assist me to protect myself.

MY TESTIMONY

LETTERS TO CLIENTS (Excerpts only)

The content of each of these letters dealt exclusively with this dispute, both these clients were directly involved in this dispute, and everything that I told them I believed to be absolutely true.

However, in spite of my urgings and explainings the clients refused to contact me, and refused to sign an authorization for me to obtain any information from the Social Security Administration or from their files.

LETTERS TO SCHUMAN EMPLOYER (Excerpts only)

Shortly, after Schuman left my employ, I stood at my secretary's desk as she spoke to Schuman. Ms. Bryan asked her how she had been able to get employment there with Mr. Himmelman without a reference from Pat. Immediately after terminating this conversation, Ms. Bryan quoted Ms. Schuman as having told her that Mr. Himmelman had said: "He did not need any reference from her, because he knows what she is."

My sincere belief was that he did not say this about me and that Schuman had made the statement for spite. Mr. Himmelman wrote back saying that he had not made any such statement and that there had been no adverse relationship. He so stated in his responsive letter which was put into evidence and reiterated this at the hearing.

This letter was written to one with a mutual interest and in order that any possible ill-will between us be resolved inasmuch as we practiced in the same

community.

Subsequently, however Ms. Schuman wrote me several letters making threats, laying claim to the clients and the like (e.g. Exhibit "J") on stationery of Mr. Himmelman where she was indicated to be his agent/associate. I had no knowledge whether he permitted her to have any practice independent of him. Was she claiming Staska/Hornof as clients on his behalf? Were her threats regarding the fees dispute made as his agent? The statements made in that letter (Exhibit A1) were all true and the majority of them are directy corroborated by the writings involved. All the foregoing was explained to the Arbitrator.

SOCIAL SECURITY LETTERS.(Excerpts only)

Inasmuch as the Arbitrator used these letter, in part as a basis for the large award against me even though none of these letters were pleaded, it is indicated to give a short explanation of my purpose in writing them.

When Schuman told me that she would take the Social Security fees if I did not pay her the amount(s) in dispute, I immediately wrote to Social Security to prevent this misappropriation of funds.

...I had no choice but to contact Social Security again to attempt to determine the amount of money involved, to urge that it be sent to me, and to try to obtain copies of the Petition and other documents which would corroborate that Schuman had processed these claims only as my associate.

....I was told that everything was confidential and that if I wanted information or documents I needed authorization from Schuman or the clients!

Finally by June, 1981, I knew that contrary to my urgings they had sent her the Staska fee and that she had withheld it and made temporary use of it. I did not want similar intermeddling with the Hornof check... If she had received the Hornof check, then I needed to know WHEN and in

what amount so that I could sue.

TESTIMONY OF SALLY SKLAR (Excerpts only)

Mrs. Sklar was the associate who was employed along with Ms. Schuman when the operative facts herein occurred. She had, however, left for other employment before the serious problems with Schuman began in April 1981.

...it was her conclusion that both these cases were office cases, and had been told by Schuman that the cases had been referred to the office. She had never heard anything about Schuman being entitled to share the fee.

She also said that while she was employed by me there were numerous occasions wherein office work was delayed by Schuman, and that great problems were caused because she did not do her work timely to meet court deadlines. She stated that such problems with Schuman existed at various times through her association with my office.

TESTIMONY OF MAUREEN BRYAN (Excerpts only)

She also recalled the incident when Schuman took the two files from her desk which made her upset because she knew I would be mad.

She also recalled a controversy in the office as to whether or not Mr. Himmelman had made an adverse remark about me, but she could not recall who it was who was supposed to have relayed the remark to us.

SCHUMAN TESTIMONY (Excerpts only)

When asked why she had placed my name on the Staska "Contract for Legal Services" during Cross-Examination at the Arbitration hearing, Schuman answered: "Because I wanted her to know who I was sharing fees with". When I asked her about the initials "JS" appearing on the document, thinking they were her initials, she said "No, I didn't sign it, those are Jean Staska's initials".

She also said that she did not pay the $91.00 rent owed to me on the first of

April, 1981 because she did not have the money.

(THE FOREGOING DECLARATION WAS VERIFIED AND WHEN FILED HAD APPENDED TO IT EACH OF THE EXHIBITS DESCRIBED. THESE EXHIBITS ARE NOT APPENDED HEREIN FOR BREVITY. NO DECLARATION WAS FILED BY SCHUMAN, NOR WERE THE WITHIN RECITALS OTHEWISE CONTRADICTED BY HER)

RAISING THE CONSTITUTIONAL ISSUE:

Oral proceedings had November 7, 1985 before Hon. Roderick Duncan, Judge of the Municipal Court, Motion to Vacate Arbitration Award: p. 6 of transcript lines 18-24....

MR BROWER: "The law is clear, that a complaint for defamation must state the words -- the defamatory words -- as a matter of constitutional due process and that absent that, those words are not raised. They're not an issue. And in addition, it was the Social Security letters, as well, that are mentioned in the memorandum as well as letters to congressman, so --" (p. 20 lines 19-24):

"The issue here, I think is very clear

from that memorandum -- that it was based on nonplead documents and as a right of constitutional due process of law and all-- everything we know about arbitration, how you should not exceed the scope but this one did and that makes the judgments thats based on it void."

Judges work together to slash big caseloads

By Will Jones
The Tribune

Now that they have reduced their own backlog of cases, Alameda County Superior Court judges will pitch in to help Municipal Court judges in Oakland do the same.

Up to eight Superior Court judges will be designated to preside over cases normally handled by 14 Municipal Court judges, said Presiding Superior Court Judge Henry Ramsey Jr.

Court officials said they aren't aware of any similar program where Municipal and Superior Court judges will work so closely to ease the backlog.

The project — called the Early Disposition Program — will start in March.

The Superior Court judges will handle selected felony cases, mostly drug-related, in their courtrooms rather than at the municipal court building, Ramsey said.

Judith D. Ford, presiding judge of the 14-judge Oakland-Piedmont Emeryville Judicial Court, said there are 1,411 civil and criminal cases pending in Municipal Court.

Those include 458 felony cases, mostly drug-related, which the Superior Court judges will attempt to whittle down. Only defendants who are currently free on bail will be sent to Superior Court judges.

"We welcome the help of (Superior Court judges) to reduce our caseloads," Ford said. "It's a very positive thing for both court systems to work together to make criminal justice a speedy system."

Ford credited Ramsey with the idea for the Early Disposition Program.

Ramsey noted that some of the criminal cases in the lower court are more than two years old.

"In essence, most of the preliminary hearing backlog . . . consists of cases where the defendant is on bail and accused of a narcotic offense," Ramsey said.

"One of the whips and scorns of

See JUDGES, Page C-2

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Judges

Continued from Page C-1

time deplored by Hamlet was the law's delay," the judge said in a letter explaining the project to other judges.

The plan calls for three Superior Court judges - Joseph Karesh, Stanley Golde and Alfred Delucchi — to handle felony cases in the initial stages at the Municipal level, including defendants who plead guilty or no contest to charges, during the first week of March.

Superior Court Judges Larry Goodman, Roderic Duncan, Martin Pulich, Alice Sullivan and Gordon Baranco, who have had Municipal Court experience, will sit as Municipal Court judges for preliminary hearings in cases not settled by pleas the remainder of the month.

The judge who presides at the preliminary hearing also will sentence defendants who plead guilty. Currently, a defendant who pleads guilty to a felony in municipal court is sent to superior court for sentencing.

He attributed the success to the hard work of other judges and the district attorney's policy of seeking revocation of probation, rather than a new trial, for some defendants who commit crimes while on parole or probation.

But other judges and prosecutors say Ramsey is largly responsible for the decrease.

"We're hoping to make a significant dent in the lower court backlog, which will certainly ease our Superior Court calender farther down the road," Ramsey said.

He and other Superior Court judges have already reduced the caseloads in their courts by 41 percent over the past year.

There were 715 cases pending at the start of 1986, but the number now has been cut to 453. Only about 200 of the non-murder cases have been pending in Superior Court more than six months, court officials said.

The murder cases dropped from 87 to 67, including 15 death-penalty cases.

He said the goal of Superior Court judges is to try non-murder cases within 90 to 120 days after the charges are filed in that court.

"Things get ugly" when cases go beyond 120 days, the judge said.

He called the decrease in caseloads a similar feeling to "winning the World Series or Superbowl."

As presiding judge, Ramsey keeps tight control over the criminal calendar by refusing to allow attorneys repeated delays in starting a trial and assigning new cases to judges the minute they complete a case.

For example, Judge Alfred Delucchi noted that he handled eight case last Wednesday.

"Because of him (Ramsey), we are working harder and handling more cases, but we are getting the caseload reduced," said one prosecutor.

Two Court Reporters Suspended by Judge

By DEE ZIEGLER
Recorder Staff Writer

Two court reporters were put on suspension Wednesday by First District Court Justice Harry Low for failure to file court transcripts on time.

Given notice were Al Garibay, who worked in San Francisco Superior Court Judge Maxine Chesney's courtroom, and Peggy Gaidos, who worked part-time in both the San Francico and Marin County Superior Courts.

Both court reporters had been given notice to show cause why they should not be sanctioned, but failed to deliver either a good excuse or the trial transcripts by the date the appellate court hearing arrived, Low said.

To be allowed to work again, both reporters must prove that they are current and receive the court's permission.

Garibay, who was given notice in March that he had to produce the transcipts of a short juvenile proceeding, was unable to deliver by October 1 when his case was heard by the appeals court, Low said. The trial, which was calendared for half-days, consumed about three days, the juvenile's attorney said.

The court reporter Garibay told the appeals court during his October hearing that he had yet to complete transcipts in some 20 trials, Justice Low said.

"Court reporters in the majority get transcripts in on time or give good cause for asking for continuances," Low said. "But there does appear to be a number of reporters who . . . have a great deal of tardiness or lack of diligence in getting them in."

Low, the presiding justice in Division Five, has been keeping a watchful eye for the past year on both court reporters and attorneys to ensure that transcipts and briefs are filed on time.

In the past three months, he has suspended about five court reporters including Garibay and Gaidos.

Low's vigilance has perhaps contributed to the Division Five's title to being the most current division in the First District. By December, Low's division will be current in criminal cases, he said. In civil matters, the division will be up to date by February, Low estimated.

The crackdown on court reporters is not limited to Division Five. The entire First District has placed a priority on monitoring court reporters as a part of its effort to clean up its backlog of cases.

SAN FRANCISCO RECORDER
10/10/85

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Lucas' says his top priority is to reduce court's large backlog

NEWPORT BEACH (AP) — Resolving a massive backlog of undecided cases, including 36 that involve the death penalty, is the top priority of the state Supreme Court, new Chief Justice Malcolm Lucas said.

Some of the death penalty cases to be reviewed include nearly 20,000 pages of transcripts from trial and pretrial hearings. But the court has done much of the research needed to consider them, and has proposed opinions on some, so "it's not quite as bad as it may appear on the surface," Lucas told a group of students and lawyers Friday.

Lucas, 59, was confirmed as chief justice by the state Legislature earlier this month after former Chief Justice Rose Bird was defeated at the polls in November along with Justices Cruz Reynoso and Joseph Grodin, whose seats haven't been filled.

"The major issue is the question of getting the court reconstituted with the new members aboard and attacking the backlog," Lucas told the group at an awards luncheon.

"The prior court was unable to make a determination on them, and now we have to have the lawyers come in and argue them again."

Lucas said he doesn't intend to try to influence the court in a conservative or liberal direction. It was the public perception of Bird, Reynoso and Grodin as being too liberal that led to their defeat, the first state Supreme Court justices to be defeated since non-partisan retention elections began in 1936.

"I would hope that we can together, as a court, improve our techniques and improve the performance of the court in terms of the backlog, lowering the amount of cases and speeding up the amount of time it takes to come out with decisions," Lucas said.

The Inter-City Express Tuesday, February 17, 1987

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